

INTERCOURSE WITH THE INDIAN TRIBES.

[To accompany bill S. No. 293.]

FEBRUARY 25, 1851.

Mr. CROWELL, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom were referred the memorials of Thomas Mangham and others, citizens of Georgia and Alabama, and also of Florida and Texas, praying indemnity for Indian depredations, and bill No. 293 of the Senate, together with the remonstrance of the Creek and Cherokee delegations against its passage, report:

That they have maturely considered the grave and important questions presented in the memorials, and the arguments submitted in support of the claim to indemnity, and will briefly state the conclusions which they have formed upon them.

The representations made in the memorial of the citizens of Alabama and Georgia, and their reproaches against the general government for its misconduct towards the Indians, seem to invite a general review and wider range of observation than the occasion would justify. It is no doubt true that the government has been led or betrayed into repeated acts of very gross injustice towards many of the Indian tribes, and especially those in Georgia and Alabama, and it may also be true that the wrongs inflicted upon the Creeks and Cherokees are more gross and palpable than any others have been obliged to suffer. But with what justice citizens of these States, especially those of the last named State, can reproach the general government with faithlessness and perfidy in its relations and intercourse with these tribes, will become more apparent upon a brief statement of facts.

For a number of years these Indians, especially the Cherokees, had been engaged, under the instruction of moral and religious teachers, in cultivating the arts of civilized life, in which they had made praiseworthy and rapid advances. Situated as they were, upon a fertile soil and under mild and sunny skies, every day added new attachments to their homes and the graves of their forefathers. They lingered around them and clung to them with a fondness that nothing but death could extinguish. They confided in the legislation of Congress and the plighted faith of the government to secure to them the peaceful and quiet enjoyment of their homes. They were rapidly abandoning the wild pursuits of savage life; and, instead of depending upon the chase for the uncertain means of subsistence, they had engaged in the cultivation of the soil and the pursuits of agriculture.

The missionaries of the cross, countenanced and encouraged, up to the

4th of March, 1829, by the humane and enlightened policy of the executive government in their disinterested labors to promote the cause of religion and learning, had established schools and churches among them; and the patriotic and liberal had generously contributed to their support.

Such was the condition of the Indian tribes at the close of the year 1828, in the States of Georgia and Alabama. Their progress in the arts of civilized life was due in a great measure to the ordinance of 1787, and the fidelity with which the government carried out its beneficent provisions. That ordinance provided "that the utmost good faith should always be observed towards the Indians; that their lands and property should never be taken from them without their consent; that in their property, rights, and liberty they never should be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity should, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them." Acts of Congress were passed, from time to time, in fulfilment of the pledges here given, and penalties imposed for their violation.

But these States, Georgia taking the lead in acts of disloyalty and disobedience to the authority of the general government, disregarding the acts of Congress and the plighted faith of the nation, as well as their own duty to obey the enactments of the national legislature, passed laws extending their jurisdiction over the territories belonging to these tribes, and in direct conflict with the acts of Congress, and deprived them of their civil and political rights. Under these circumstances it became the duty of the President to see the laws for the protection of the Indians faithfully executed; or, disregarding his duty, tamely to acquiesce in practical nullification and the insolent usurpations of these States. To the lasting reproach of the government and the country, the latter course was adopted. Their laws and customs were abolished, and the Indians were not allowed to meet in council to make laws, on penalty of imprisonment in the county jail; and residence in the Indian country authorized by Congress was punished by imprisonment in the penitentiary.

These laws, that seemed intended to oppress and then to destroy their victims, broke up their form of government, and struck down their power at a blow. The Indians were disfranchised, their usages and customs were abolished, and the integrity of the tribes as a distinct community was annihilated. In this state of things and under the pressure of these enactments the chiefs of the Creek Indians were invited by the President to visit the city of Washington; and, under the influences which he brought to bear upon them, they were induced to sign the treaty of March, 1832. This famous treaty, the parent of so many wrongs, was the consummation of the series of measures the object of which was to rob the Indians of their cultivated and fertile lands, and then drive them by violence from their homes.

Some of the provisions of this treaty were as follows:

1. The Creek tribe of Indians cede to the United States all their land lying east of the Mississippi river.

2. The United States engage to survey the said land as soon as the same can conveniently be done; and when the same is surveyed, to allow ninety principal chiefs of the tribe one section, and every other head of a Creek family one-half section each; which tracts were to be reserved from sale for their use, for the term of five years, unless sooner disposed of by them.

3. Those tracts may be conveyed by the persons selecting the same to any other persons, for a fair consideration, in such manner as the President may direct. The contract shall be certified by some person appointed for that purpose by the President, but shall not be valid till approved by the President.

4. At the end of five years all the Creeks entitled to these selections, and desirous of remaining, shall receive patents therefor, in fee simple, from the United States.

12. The United States are desirous that the Creeks should remove to the country west of the Mississippi, and join their countrymen there; and for this purpose it is agreed that as fast as the Creeks are prepared to emigrate they shall be removed at the expense of the United States, and shall receive subsistence while upon the journey, and for one year after their arrival at their new homes: *Provided, however,* That this article shall not be construed so as to compel any Creek Indian to emigrate, but they shall be free to go or stay, as they please.

The objects of the treaty, in view of the occurrences which preceded and led to it, and its contradictory provisions and ambiguous phrases, under which its real purposes are thinly veiled, are nevertheless plain enough to most minds, though sufficiently disguised to betray the confiding Indians into signing it.

Soon after the ratification of the treaty, the lands were surveyed in conformity to its provisions, certifying agents were appointed, and, armed with instructions from the President, proceeded to the discharge of their duties in the Indian territory. All things being now in readiness, a stupendous system of fraud and swindling was commenced and prosecuted under the forms of law, the foundation of which was carefully laid in the provisions of the treaty. The practice of "personation" became frequent, and Indians were bribed to appear before the certifying agents and declare that they were owners of reserves belonging to others; and by means of forgery and perjury, the most shameless and infamous outrages were perpetrated upon the poor Indians.

The miserable pittance of money paid to them as the price of their lands was taken away from them after they had acknowledged the sale, either by fraud or force; and in some cases in which they were unwilling to return what they had received for their land, they were whipped into acquiescence. It is just and right to declare, in this connexion, that there is no darker page in the history of the government and the country than the one that records the wrongs done to these Indians.

Being driven from their lands and defrauded of their money, they were reduced, many of them, almost to a state of starvation; and, keenly alive, as they were, to a sense of these outrages, it is not surprising that they should commit depredations on their plunderers, and be driven by revenge to acts of open hostility.

These outrages necessarily provoked the war (if they were not so intended by the guilty perpetrators) that broke out in the spring of 1836; and having been the cause, by means of their perfidious and criminal conduct, the people of that section of country now become the victims of the Indian hostilities which they had stimulated. Yielding to the spirit of revenge, so characteristic of the race, or struggling to obtain shelter and clothing after having been expelled from their homes, and needful food to prolong their lives, now made wretched and miserable, the Indians no doubt destroyed a large amount of property. And for property thus destroyed in

the course of the war, the memorialists seek compensation. With a full knowledge of all the occurrences that preceded the war and led to it, and in view of the provocations which the Indians had for committing depredations, it cannot be denied that it was a most terrible instance of avenging and retributive justice. These claims have been heretofore presented to Congress and rejected, (Reps. Nos. 932 and 1,028, 25th Congress, 2d session, Ho. of Reps.,) upon the ground that the government is not bound to pay for depredations committed by hostile Indians, and very properly rejected. It is the duty of government to afford protection to the citizen, but it is no part of its duty to become the insurer of his private property. It would bankrupt the treasury of any nation. The claim for indemnity, it may be further remarked, does not come within the principles of the act of Congress approved April 9, 1816, (Statutes at Large, vol. 3, page 261, chapter 40.) That act authorizes payment only for property lost, captured, or destroyed by the enemy *while in the military service of the United States*, and there has been no departure from the rules which it established, and it would be exceedingly unsafe to allow any after so long an acquiescence.

But the memorialists contend that the hostilities were irregular, and committed by lawless bands, and not authorized by a majority of the nation. The committee, however, do not concur in this opinion. The evidence is plainly the other way, and shows clearly that the war was general, and a majority of the nation supported it, and was in fact engaged in it. Every act of hostility is not war; and what constitutes a regular war, may sometimes be a doubtful question. It must, of course, to be a lawful war, be distinguished from private acts of outrage and piracy.

In ancient times hostilities were usually preceded by a public declaration communicated to the enemy; and it was the custom among the Greeks and Romans to publish a declaration of injuries received, and send a herald to the enemy's country to demand satisfaction, before the war commenced; and invasions without notice were considered unlawful. During the middle ages, such was the state of society and the turbulence of the times, a previous declaration of war was held to be necessary by the laws of honor, chivalry, and religion. But in later times the practice has fallen into disuse, and now a previous declaration of war is not required by the usages of nations, or the established principles of public law. War may begin in civilized States with the commencement of mutual hostilities; and much more may it exist among Indian tribes, that owe no allegiance to the laws of civilized States.

Whether the alleged depredations, however, were committed during the existence of such a state of hostilities as is recognised by the usages of civilized nations, as lawful war or not, is a matter of indifference, in the opinion of the committee, to the present inquiry. In either event, the claim to indemnity for these depredations, committed by hostile Indians, would be invalid, and must be rejected.

It would not, in the first place, come within the provisions of the seventeenth section of the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved April 30, 1834, because they apply to injuries done by Indians belonging to tribes in amity with the United States, upon property of persons lawfully in the Indian country, or in any State or Territory inhabited by citizens of the United States; and, in the second place, the principles of the act of the

9th of April, 1816, do not embrace that description of injuries of which the memorialists complain, but, by clear implications, exclude them. It has been, at any rate, the uniform practice of government not to allow them; and the committee are not willing, and see no sufficient reason, to unsettle the usages of the government.

The attempt of the memorialists to cast doubt upon the existence of the war, for the purpose of improving their claims of indemnity, between the Creek nation of Indians and the United States, in the spring and summer of 1836, when the depredations complained of were committed, and such a war even as would be recognised as lawful by the usages of modern nations, as contradistinguished from acts of outrage and piracy by private citizens, deserves some further notice. The government of the United States certainly assumed the existence of war: troops were levied, and, under the command of the most able and distinguished officers of the army, were hurried to the theatre of hostilities. The files of the proper department furnish the most convincing evidence, in the official reports of commanding officers, not only of actual war, in the usual and ordinary acceptation of the term, but of a most ferocious and sanguinary one, marked with all the appalling horrors of savage warfare. And, whether we look into the pages of contemporaneous history, examine the public documents, or observe the action of the legislative and executive departments, the number of lives lost and the millions of public treasure expended, the testimony is sufficient to remove all doubts from every candid mind. Skepticism on this point would seem to be the height of folly.

It may not be improper to add here, by way of conclusion on this head, that, under the second section of an act of Congress approved March 3, 1837, commissioners were appointed "to inquire," among other things, "what depredations were committed by the Seminole and Creek Indians on the property of citizens of Florida, Georgia, and Alabama, immediately before the commencement of hostilities on the part of said respective tribes of Indians; what amount of depredations were committed during the pendency of said hostilities, and *what portion of the Creek tribe was engaged in such hostilities.*" Claims to the amount of one million two hundred and fifty-seven thousand four hundred and seven dollars and thirty cents were presented to the commissioners for depredations committed during the existence of hostilities, but these were scaled or reduced to three hundred and forty-nine thousand one hundred and twenty dollars and thirty-seven cents.—(Ex. Doc. No. 127, 2d session 25th Congress.) Upon the subject of hostilities, the following language is employed: "The commissioners, after the most diligent inquiry, find it very difficult to determine what portion of the Creek tribe were engaged in actual hostilities. Intelligent men, claiming to have been favored by the best means of information, differ widely on the subject. Two different versions of the origin of the war are given by persons residing in the district. The first is, that it was a measure previously concerted by a large majority of the tribe, (as was indicated by repeated war-dances and ball-plays,) and that the day appointed to commence hostilities was, through mistake or eagerness, anticipated by a few desperate young warriors.

"The second is, that no such concert previously existed, and that the acts of a few who set the ball in motion were wholly unauthorized by the main body of the tribe.

"But the contest having been begun, fears were entertained that all

would be implicated and treated as ringleaders; they therefore sought rendezvous for the purpose of consultation and defence. Having once imbodyed, they were afraid to disperse until, one by one, (as much from necessity as persuasion,) they agreed to assume a hostile attitude, and engaged in plundering the deserted property of the whites. The first account is most generally credited. So much appears to be certain: that a very small number, without any apparent concert with the rest, did commence and carry on hostilities for several days before they received any accession to their strength, *and that ultimately the majority of the warriors of the tribe did engage in acts of open hostility.*" The commissioners further observe that they "also learned that a *majority of the Creeks* were alternately engaged in hostilities, and that no depredations were committed by a remnant of said tribe, supposed to be friendly, and a part of whom were actually employed against the Seminoles."

In every view, therefore, of the claims of the memorialists, which the committee have been able to take after the most patient and candid examination, they are found to be wholly inadmissible and must be rejected. In conformity, therefore, to the usages and policy of the government from the earliest times, the well established principles of international law, and the legislation of Congress founded upon these principles, the committee feel bound to refuse indemnity for losses sustained under the circumstances disclosed in the present application.

In the act of Congress before referred to, which authorized the President by suitable agents to ascertain the amount of depredations committed by the Creek Indians in Florida, Georgia, and Alabama, it is expressly provided as follows: "Nothing hereinbefore contained shall be so construed as to subject the United States to pay for depredations not provided for by the act of April nine, eighteen hundred and sixteen, and the acts amendatory thereto, nor by acts regulating the intercourse between the Indian tribes and the United States."

The bill from the Senate referred to the committee, nevertheless, if passed into a law, would, under pretence merely of extending the "benefit of the act of Congress approved June 30, 1834, to the people of Texas and others," authorize and secure the payment of the whole amount of the alleged depredations.

The bill declares that the provisions of the above named act "shall be, and the same are hereby declared to be, applicable in all respects to cases of *Indian depredations* committed in Alabama, Georgia, and Florida, subsequent to the first day of January, 1836;" thereby expressly embracing the claims under consideration, as hostilities commenced and the war broke out in the month of May, and terminated in August, of that year. The committee, therefore, are opposed to the passage of the bill in its present shape, and recommend an amendment striking out all after the enacting clause, and inserting a provision extending the benefits of the act to regulate intercourse with the Indian tribes, and to preserve peace on the frontiers, approved June 30, 1834, to the people of the State of California and the Territories of Oregon, Utah, and New Mexico; and with this amendment they recommend its passage.

It is impossible fully to understand the subject referred to the committee, and especially one of the most operative causes in producing the difficulties and disturbances out of which the claim for indemnity for Indian depredations has sprung, without a brief reference to the legislation

of Georgia against the Cherokees, and the struggles of that injured and enlightened nation to shield itself from wrong and outrage, under the faith of the general government pledged in the most solemn manner, in numerous treaties, for a long series of years, and the legislation of Congress. Georgia lusted for the possessions of the Cherokees, and resolved to have them. How could this purpose be accomplished? The impediments in the way, moral, legal, and constitutional, seemed to be insurmountable. The Indians were reposing in fancied security under the protection of the general government. The obligation of treaties must be disregarded, the plighted faith of the nation must be tarnished, and the laws of the land trampled under foot, before they could be driven from their possessions, or disturbed in their peaceful and quiet homes.

It was, moreover, the sworn duty of the President of the United States to see the laws faithfully executed. And the enlightened civilization of the age and the opinions of mankind, as moulded and formed by Christian morals, it was believed by many would not tolerate national perfidy towards a weak and defenceless people. But these difficulties did not deter the people of Georgia from the undertaking. Several acts were passed by the legislature of that State in the years 1828 and 1829, the effect of which was to abolish the Cherokee laws, deprive the nation of their protection, and extend over them the jurisdiction and laws of Georgia; all of which were clearly repugnant to the treaties in full force, to the acts of Congress, and the constitution of the United States. The national Executive neglecting and failing to see the laws for their protection faithfully executed, they applied to the Supreme Court of the United States for an injunction to restrain the State of Georgia and her officers from enforcing her laws within the territory belonging to the Cherokee nation.

The bill recites the different treaties, from that concluded at Hopewell in November, 1785, to the one concluded at the city of Washington in the month of February, 1819; all of which, it was averred, were ratified and confirmed by the Senate of the United States, and became, thence forth, a part of the supreme law of the land; and prays that the several laws of Georgia set forth in the bill may be declared null and void, on the ground of repugnancy to the constitution, laws, and treaties of the United States.

The case was argued on the part of the complainants by Mr. Sergeant and Mr. Wirt. No counsel appeared for the State of Georgia.

For the complainants it was contended—

1. That the parties before the court were such as, under the constitution, to give to this court original jurisdiction of the complaint made by the one against the other.

2. That such a case or controversy, of a judicial nature, was presented by the bill, as to warrant and require the interposition of the authority of the court.

3. That the facts stated by the complainants exhibited such a case in equity, as to entitle them to the specific remedy by the injunction prayed for in the bill.

Mr. Chief Justice Marshall delivered the opinion of the court. This bill is brought by the Cherokee nation, praying an injunction to restrain the State of Georgia from the execution of certain laws of that State,

which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable subsistence. To preserve this remnant the present application is made.

Before we can look into the merits of the case, a preliminary inquiry presents itself. Has this court jurisdiction of the cause?

The third article of the constitution describes the extent of the judicial power. The second section closes an enumeration of the cases to which it is extended with "controversies" "between a State, or the citizens thereof, and foreign States, citizens, or subjects." A subsequent clause of the same section gives the Supreme Court original jurisdiction in all cases in which a State shall be a party. The party defendant may, then, unquestionably be sued in this court—may the plaintiff sue in it? Is the Cherokee nation a foreign State in the sense in which that term is used in the constitution? The counsel for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a State, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a State from the settlement of our country. The numerous treaties made with them by the United States recognise them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognise the Cherokee nation as a State, and the courts are bound by those acts.

A question of much more difficulty remains: Do the Cherokees constitute a foreign State in the sense of the constitution?

The counsel have shown conclusively that they are not a State of the Union, and have insisted that individually they are aliens, not owing allegiance to the United States; an aggregate of aliens composing a State must, they say, be a foreign State: each individual being foreign, the whole must be foreign.

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else. The Indian territory is admitted to compose a part of the United States. In

all our maps, geographical treatises, histories, and laws, it is so considered; in all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper; and the Cherokees in particular were allowed, by the treaty of Hopewell, which preceded the constitution, "to send a deputy of their choice, whenever they think fit, to Congress." Treaties were made with some tribes by the State of New York, under a then unsettled construction of the confederation, by which they ceded all their lands to that State, taking back a limited grant to themselves, in which they admit their dependence.

Though the Indians are acknowledged to have an unquestionable, and heretofore unquestioned, right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title, independent of their will, which must take effect in point of possession when their right of possession ceases; meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their Great Father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility.

These considerations go far to support the opinion that the framers of our constitution had not the Indian tribes in view when they opened the courts of the Union to controversies between a State, or the citizens thereof, and foreign States.

In considering this subject, the habits and usages of the Indians, in their intercourse with their white neighbors, ought not to be entirely disregarded. At the time the constitution was framed, the idea of appealing to an American court of justice for an assertion of right or a redress of wrong, had perhaps never entered the mind of an Indian or of his tribe; their appeal was to the tomahawk or to the government. This was well understood by the statesmen who framed the constitution of the United States, and might furnish some reason for omitting to enumerate them among the parties who might sue in the courts of the Union. Be this as it may, the peculiar relations between the United States and the Indians occupying our territory are such, that we should feel much difficulty in considering them designated by the term "foreign State," were there no other part of the constitution which might shed light on the meaning of these words. But we think that in construing them, considerable aid is furnished by that clause in the eighth section of the third article which

empowers Congress to "regulate commerce with foreign nations and among the several States, and with the Indian tribes." In this clause they are as clearly contradistinguished by a name appropriate to themselves from foreign nations as from the several States composing the Union. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the appellation distinguishing either of the others be, in fair construction, applied to them. The objects to which the power of regulating commerce might be directed are divided into three distinct classes—foreign nations, the several States, and Indian tribes. When forming this article the convention considered them as entirely distinct. We cannot assume that the distinction was lost in framing a subsequent article, unless there be something in its language to authorize the assumption.

The counsel for the plaintiffs contend that the words "Indian tribes" were introduced into the article empowering Congress to regulate commerce for the purpose of removing those doubts in which the management of Indian affairs was involved by the language of the ninth article of the confederation. Intending to give the whole power of managing those affairs to the government about to be instituted, the convention conferred it explicitly, and omitted those qualifications which embarrassed the exercise of it as granted in the confederation. This may be admitted without weakening the construction which has been intimated. Had the Indian tribes been foreign nations in the view of the convention, this exclusive power of regulating intercourse with them might have been, and most probably would have been, specifically given, in language indicating that idea, not in language contradistinguishing them from foreign nations. Congress might have been empowered "to regulate commerce with foreign nations, including the Indian tribes, and among the several States." This language would have suggested itself to statesmen who considered the Indian tribes as foreign nations, and were yet desirous of mentioning them particularly.

It has been also said that the same words have not necessarily the same meaning attached to them when found in different parts of the same instrument—their meaning is controlled by the context. This is undoubtedly true. In common language the same word has various meanings, and the peculiar sense in which it is used in any sentence is to be determined by the context. This may not be equally true with respect to proper names. "Foreign nations" is a general term, the application of which to Indian tribes, when used in the American constitution, is, at best, extremely questionable. In one article in which a power is given to be exercised in regard to foreign nations generally, and to the Indian tribes particularly, they are mentioned as separate, in terms clearly contradistinguishing them from each other. We perceive plainly that the constitution, in this article, does not comprehend Indian tribes in the general term "foreign nations;" not, we presume, because a tribe may not be a nation, but because it is not foreign to the United States. When afterwards the term "foreign State" is introduced, we cannot impute to the convention the intention to desert its former meaning, and to comprehend Indian tribes within it, unless the context force that construction on us. We find nothing in the context, and nothing in the subject of the article, which leads to it.

The court has bestowed its best attention on this question, and, after

mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign State in the sense of the constitution, and cannot maintain an action in the courts of the United States.

A serious additional objection exists to the jurisdiction of the court. Is the matter of the bill the proper subject for judicial inquiry and decision? It seeks to restrain a State from the forcible exercise of legislative power over a neighboring people asserting their independence, their right to which the State denies. On several of the matters alleged in the bill—for example, on the laws making it criminal to exercise the usual powers of self-government in their own country by the Cherokee nation—this court cannot interpose, at least in the form in which those matters are presented.

That part of the bill which respects the land occupied by the Indians, and prays the aid of the court to protect their possessions, may be more doubtful. The mere question of right might perhaps be decided by this court, in a proper case, with proper parties; but the court is asked to do more than decide on the title. The bill requires us to control the legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the court may well be questioned. It savors too much of the exercise of political power to be within the proper province of the judicial department. But the opinion on the point respecting parties makes it unnecessary to decide this question.

If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted; if it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past, or prevent the future.

The motion for an injunction is denied.

By such refined and slender technicalities which she summoned to her aid against the Cherokees, who declare in their bill that under the promised "patronage and good neighborhood" of the United States a portion of the people of the nation had become civilized Christians and agriculturists, and in these respects were willing to submit to a comparison with their white brethren around them, the valiant and chivalrous State of Georgia succeeded in breaking through the meshes of the law, and triumphing over her meek, defenceless, and submissive adversary.

An elaborate dissenting opinion was given by Justice Thompson, and concurred in by the learned Justice Story, in which the following conclusions are announced:

1. That the Cherokees compose a foreign State, within the sense and meaning of the constitution, and constitute a competent party to maintain a suit against the State of Georgia.

2. That the bill presents a case for judicial consideration, arising under the laws of the United States, and treaties made under their authority with the Cherokee nation, and which laws and treaties have been, and are threatened to be still further, violated by the laws of the State of Georgia, referred to in this opinion.

3. That an injunction is a fit and proper writ to be issued to prevent the further execution of such laws, and ought therefore to be awarded.

Other acts were subsequently passed by the legislature of Georgia still more oppressive and outrageous, and enforced with remorseless cruelty upon the Cherokees, and those who resided among them, in direct opposition to the laws and authority of the general government. These gave

rise to another suit, which was determined in the Supreme Court of the United States, at the January term, A. D. 1832, (*Worcester v. the State of Georgia*, 6 Peters' Reports, 515,) the report of which is hereto attached, marked No. 3, and ordered to be printed as part of this report.

Encouraged by the example of Georgia, and her successful nullification and resistance of the authority of the general government, and the pusillanimous conduct of the executive department, Alabama now commenced a series of aggressions upon the Creek Indians within her borders, the object of which was to drive them from their homes, and seize their possessions.

Less civilized and enlightened than the Cherokees, and not so meek and submissive, the Creeks made some resistance to the prosecution of this enterprise. The treaty negotiated at Washington, in the manner already stated, was signed and ratified; and the atrocious outrages committed in its execution, and which necessarily resulted from its provisions, were the immediate cause of hostilities. Commissioners were appointed under the authority of a resolution passed by the House of Representatives, July 1, 1836, to investigate the causes of the hostilities then existing with the Creek Indians, and their report, with the accompanying documents, was transmitted by the President to the House, February 14, 1837, (Executive Doc. No. 154, 2d session 24th Congress, Ho. of Reps.) and is hereto attached, marked No. 4, and ordered to be printed as part of this report.

Notwithstanding the labored efforts of the commissioners, and especially one of them, Mr. Crawford, to justify the conduct of Alabama and the executive government in their treatment of the Indians, and the coloring which these efforts naturally imparted to their representations, it was impossible successfully to conceal or disguise the wrong and injustice of which they were made the victims. This will appear plain from an examination of this document, which, in the opinion of the committee, is necessary to a full and complete understanding of the claims of the memorialists. The memorials (No. 1) and the remonstrance of the Creeks and Cherokees (No. 2) are to be printed as part of this report. The committee recommend the adoption of the following resolution:

Resolved, That the claims of the memorialists ought not to be allowed.

No. 1.

To the Senate and House of Representatives of the United States in Congress assembled:

The petition of the undersigned, citizens of Alabama and Georgia, most respectfully represents to your honorable bodies that, for several years anterior to May, 1836, they became settlers in that portion of said States known as the Creek Nation. This country had been ceded to the United States by treaties ratified April 22, 1826, and April 12, 1834.

These treaties empowered the Creek Indians to sell their reservations, so far as Alabama was concerned—of which many of your petitioners became the purchasers. The government, too, sold the unlocated lands in the Creek Nation in 1834, before the Indians disposed of their reserves—for which we paid, before the commencement of hostilities, both the Indians and the government. The government sold its unlocated lands

acquired by said treaties to the highest bidder, and many of your petitioners became the purchasers, having paid for the same a full and fair consideration; and thus, for the first time in the history of the country, the whites, by the policy of the government, were settled among the Indians.

We had no direct or indirect instrumentality in promoting the Indian hostilities that broke out early in May, 1836, by which many of our best and most valuable citizens lost their lives, and we our property. We think this was the result of the mistaken policy of the government in permitting the Indians to remain in the ceded territory after their lands were disposed of. We purchased these Indian lands for the purposes of cultivation, and, while thus employed, were driven from our pursuits by the sudden outbreak of a lawless band of warriors, who carried death and destruction in our midst, without regard to age, sex, or condition. This sudden assault was beyond our control: the government alone could have prevented it, by taking the necessary steps at an earlier period to move the tribe to its destined home beyond the Mississippi. By the policy of the government, they had become landless; they had planted no crops; the game was destroyed; and the Indian was almost in a starving condition. In these desperate circumstances, impelled by necessity, they killed and used our stock, which ranged at large in the woods, for subsistence—which we, for the most part, submitted to, without complaint or redress, as their condition was truly deplorable.

Mr. A. Balch, the commissioner appointed by the government to investigate the causes that led to the Indian hostilities, reported, among other things, that, in the latter part of 1834, the Creeks suffered very much for the want of food; that, in 1835, they were reduced to a state but little short of starvation; but he avers that it was contrary to the policy of the government to supply them with food, as this act of benevolence would have retarded emigration. (See Ex. Docs., vol. 7, 2d sess. 25th Cong., No. 154, page 157.) This mistaken policy of the government, to starve them into emigration, if such was the design, was one of the primary causes that led to hostilities, the loss of life, and the destruction of our property, for which we now ask indemnity. Notwithstanding the frequent communications of the executive officers of Alabama and Georgia, besides many highly respectable citizens residing in the Creek Nation, to the Secretary of War, advising the government of the unsettled and discontented condition of the Creeks, with a very strong probability of hostilities, yet their request for military aid to keep the Indians in subjection was not granted. (Ex. Docs., vol. 7, 2d sess. 24th Cong., No. 276.)

At the commencement of hostilities, those of us who escaped the vengeance of the hostile Creeks were compelled to flee from our homes in great haste, to place our families in security, leaving our property behind, which was either destroyed by the enemy or used by the United States troops and friendly Indians. The supplies thus furnished the government forces and friendly Indians, taken from our cribs, meat houses, fodder-stacks, cattle, &c., that escaped the destruction of the enemy, were absolutely necessary to subsist those troops that had rallied to the rescue long before the government could furnish the necessary supplies for their maintenance. (See letter of Hon. D. H. Lewis, the petition of Jeremiah Bennett, sen., and others, letter and affidavit of John B. Hogan, letter of General Thomas J. Woodward, J. B. Collins, Colonel Charles McLamore,

and others of equal character and respectability. (Ex. Doc., 2d sess. 25th Cong., No. 127.)

President Jackson, in his annual message, 1836, brought the subject of our losses to the consideration of Congress, and recommended an appropriation for our indemnity. In pursuance of this executive recommendation, Congress authorized the President to appoint a board of commissioners to investigate and report the amount of loss sustained by the Indian depredations in Georgia, Alabama, and Florida. L. T. Pease, J. M. Smith, and Mr. Gibson, constituted said commission. They rendered their report to the Honorable J. R. Poinsett, Secretary of War, November 28, 1837. The amount claimed by the sufferers they reported to be \$1,257,407 30. The amount allowed was \$355,797 92. This last sum was for real and actual loss. They refused to allow any sum for consequential damage, though it seems to the undersigned that to do so would be but a simple act of justice. It was not the fault of the settler who resided on the lands, purchased from the government and the Indian in good faith, that hostilities occurred. No acts on our part could have guarded against it; for, if there was error anywhere, it certainly was with the government, in failing to make arrangements to emigrate the Creeks—always a restless and discontented tribe—at an earlier period, to have supplied them with food while preparing for removal, and to have kept in the nation a sufficient military force to have awed them into subjection. If this had been done on the part of the government, your petitioners would not now be knocking at the doors of Congress for redress.

The legislature of Alabama at the session of 1836-'37, by its memorial, asked the government to grant indemnity for the loss sustained by her citizens during the Indian hostilities. This memorial was referred to the Committee of Claims of the House of Representatives, and a report was rendered thereon 15th May, 1838. In July, thereafter, said committee made a second report more in *extenso*, which assumed the grounds that that portion of our demands for the destruction and loss of our property by the Creek aggressions should not be paid by the United States, as it was not the policy of the government to pay for property lost during a state of war, unless the demands came within the rules established by the act of Congress approved April 9, 1816. As to the other branch of our claim, asking pay for property used to supply the government troops and friendly Indians with food and provender, the committee reported a bill in our behalf and recommended its passage, but this occurred near the close of the session of 1838; the bill did not become a law, we presume, for the want of time. This whole matter was at that period and since in the hands and under the control of the Hon. D. H. Lewis, our immediate and much esteemed representative, whose death has very much retarded the final settlement of our demands against the government. The grounds assumed by the Committee of Claims in rejecting the first branch of our claim, however correct when properly applied, cannot exercise the slightest influence against the payment of our demands. The proof and the facts will not sustain the committee in its deductions. In the report alluded to, the main objection to indemnity rests on the fact that, "the depredations being committed during a state of actual war, it was not in accordance with the policy of the government to indemnify the sufferers." Now what are the facts upon which the committee came to the conclusion that our losses occurred during a state of actual war? We presume the com-

mittee relied alone upon the *ex parte* report of the commissioners aforesaid, who reported "that after the most diligent inquiry, they find it very difficult to determine what portion of the Creek tribe was engaged in actual hostilities. Intelligent men, claiming to have been favored by the best means of information, differ widely on the subject." But they say in conclusion, on this point, that "so much appears to be certain, that a very small number, without any apparent concert with the rest, did commence and carry on hostilities for several days before they received any accession to their strength, and ultimately a majority of the warriors of the tribe did engage in acts of open hostility." Upon this we presume the committee relied to prove that a majority of the Creek nation were in an actual state of war against the whites; but this opinion, however honestly entertained by the board of commissioners, is not warranted by the facts of the case, for we know that but a small portion of the Creek nation was in a state of actual hostilities. It will be remembered by your honorable bodies that the Indian outbreak occurred the 2d day of May, 1836, and resulted in the death of ——— Flournoy. This may be considered the commencement of hostilities. The census taken of the government 13th May, 1833, shows the whole number of the Creek tribe, exclusive of negroes, was 21,762. Of this aggregate, the lower Creeks numbered only 8,522 souls exclusive of negroes, and it was only this portion of the nation that resorted to hostilities: the upper Creeks very generally joined the whites or remained neutral. That portion of the Creek nation now composed of the counties of Benton, Talladega, Randolph, and Coosa, in Alabama, remained at home and took no part whatever in the outbreak. There were less than 3,000 warriors in the whole nation: this was the maximum. Then what is the result? John B. Hogan, by affidavit, declares that, at the request of Governor Clay, of Alabama, and General Jesup, he raised from 1,300 to 1,500 friendly warriors under Opoth-le-yoholo, and there were 500 or 600 more that were placed under the command of General Thomas J. Woodward, under Jim Boy. The rolls on file in the War Department will give the exact number of warriors, to which your honorable bodies have access, and the undersigned invite the most rigid scrutiny. There never was one-fourth of the nation engaged in hostilities during the outbreak of 1836. Indeed, we have no idea that there were 100 hostile Indians that acted in concert in 1836, while making aggressions upon the settlements: the large majority were at peace and amity with the whites, and joined our flag to put down those warriors that had assumed hostilities without any authority from the nation. No facts in the possession of the government, or anywhere else, can prove to the contrary. Captain Page, an officer of the United States, much confided in by the government, in writing from Fort Mitchell, Alabama, 20th May, 1836, to General George Gibson, of Washington city, declares that if he had only 500 men he could put down every hostile movement; which, of course, he could not have done with so small a number, if the nation had been in an actual state of war.

This was not the case, and the loss and damage we sustained in the wanton destruction of our property did not result from a state of war, but from the aggressions of a small remnant of the nation who acted without any authority from the council of the tribe that alone had the power to declare war. If these are the facts—and we are prepared to verify them—then it is obvious that the Committee of Claims acted from incorrect conclusions

in the rejection of that portion of our claim for the destruction of our property by the Indians.

The law of 1816, with its subsequent amendments, has no just and valid application, so far as our rights and interests are involved. Our property was not destroyed by a foreign enemy, and during a state of actual war; neither can the payment of our demand be used as a precedent, and hereafter open the door for all who lost property during a state of war to receive payment from the government, so much feared by the committee, for we claim redress under the provisions of the 17th section of the intercourse act, approved June 30, 1834, (see United States Laws, 23d vol., page 114,) which has nothing to do with losses resulting from a state of war. At an early period after hostilities ceased, we brought to the consideration of Congress our losses, and asked indemnity therefor. There has been no neglect or fault on our part. We had no power or authority to demand and receive restitution either from the Creek nation or the troops in the service of the United States for the loss of our property, though we were gravely told by the report above referred to that we must look to the Indians and the troops in the service of the United States for indemnity; that the government is not bound for the lawless aggressions of its soldiers, or the outbreaks of the Indians, so far as the loss of property is concerned. This we hold to be altogether untenable, and requires no response, as we rest our demand for indemnity under the provisions of the intercourse act of 1834. Our accounts have been on file in the Office of Indian Affairs since 1837. The government, in the removal of the Creek Indians to the country assigned them beyond the Mississippi, did not choose to demand indemnity in our behalf, and, having failed to do so, must be responsible to the sufferers under the intercourse act, or there would be a wrong without a remedy. We are satisfied that a fair construction of this act of Congress gives us a just demand against the government, not only for real but resulting damage. The amount of our claim in the aggregate cannot affect its legality and justice in the slightest degree; and if the sum total involved should elicit the most rigid investigation on the part of Congress, we have gained much, as investigation must result in the payment of our demands: of this we have the most abiding confidence.

We, your petitioners, find that Congress have granted relief to several of our fellow-sufferers, who, like us, lost their property by the depredations of Indians. We refer more particularly to the cases of Generals Clinch and Hernandez, as they are cases in point. Congress have amply indemnified these gentlemen, and we trust that it will award to us the same justice. The pretext that the buildings on the farms of these claimants had been used as military depots by the United States troops, and thus gave direction to Indian vengeance, which brought their demands within the rule resulting from the act of 1816, and its amendments, upon examination will be found to be fallacious, for the fact was admitted by these gentlemen that when their houses were burnt, and other property destroyed, the United States troops had been removed therefrom. The plea that said buildings had previously been occupied by the government troops, which was the cause of their destruction, is untenable; their occupancy by the troops some days before their destruction could not have exercised the slightest influence upon the action of the Indians, else how did it so often happen that many of our dwellings were burnt and property destroyed

which had not been used as depots? The Indian rule of warfare has ever been to burn and destroy everything within their reach. The law of 1816, under which the Committee of Claims rejected a large portion of our demands, was, it will be remembered, enacted a short time after the close of the war with Great Britain, and was designed by Congress to govern the settlement of those claims which originated during that war, and can have no just application to savage warfare. The one was a foreign enemy, and governed in their hostilities by the usages of civilized warfare: the other a tributary nation of people, wholly under the power and control of the United States, who acknowledged no rule appertaining to civilization. It is their usage to war as well against property as persons. Then the application of a rule to govern the settlement of claims resulting from the destruction of property during a state of war with a civilized enemy, cannot, with any force, apply to savage warfare. When the reason that gave origin to a rule ceases, the rule itself should cease. But with this act of 1816, and its subsequent amendments, we have nothing to do; our property was not destroyed during a state of war, and we rest our claim upon the intercourse act of 1834. We trust that Congress will take up our claim, and award to us that justice the law demands.

THOMAS MANGHAM,
CULLEN BATTLE,
And others.

MAY 9, 1850.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, September 18, 1849.

SIR: Your letter of the 3d instant, addressed to the President, has been referred to this office.

In reply to your inquiry as to the intention of the government in regard to the Indians yet remaining in Florida, I have to inform you that military protection has already been furnished, ample for the defence of the inhabitants, as you will no doubt have learned ere the reception of this communication, and that the subject of the early removal of said Indians west is now under advisement, and the preliminary steps already taken in the matter.

Your losses and annoyances the department deeply regrets; but as the act usually known as the "intercourse law" does not embrace Florida, Congress is the only power that can redress your grievances and afford you just and proper remuneration.

Very respectfully, your obedient servant,

OLANDO BROWN.

WM. D. WARD, Esq.,
New Smyrna, Florida.

STATE OF FLORIDA, ORANGE COUNTY,
Dunlawton, March 1, 1850.

An estimate of losses sustained by Wm. D. Ward, of Indian river, Florida, in consequence of depredations committed on the 12th of July, 1849, by a small party of Billy Bowlegs' tribe of Indians:

Loss of crop	-	-	-	-	-	-	-	\$500 00
Tropical fruits	-	-	-	-	-	-	-	500 00
Farming utensils	-	-	-	-	-	-	-	50 00
Chest of carpenters' tools	-	-	-	-	-	-	-	75 00
Kitchen furniture	-	-	-	-	-	-	-	25 00
Household furniture	-	-	-	-	-	-	-	75 00
Beds and bedding	-	-	-	-	-	-	-	150 00
Wardrobe	-	-	-	-	-	-	-	150 00
One boat	-	-	-	-	-	-	-	25 00
Seines	-	-	-	-	-	-	-	50 00
Sugar-mill	-	-	-	-	-	-	-	50 00
Lumber	-	-	-	-	-	-	-	25 00
4 head cattle, at \$25	-	-	-	-	-	-	-	100 00
13 head hogs, at \$5	-	-	-	-	-	-	-	65 00
Provisions	-	-	-	-	-	-	-	30 00
Merchandise	-	-	-	-	-	-	-	40 00
1 harness	-	-	-	-	-	-	-	15 00
Crockery	-	-	-	-	-	-	-	15 00
Books	-	-	-	-	-	-	-	40 00
								1,980 00

Personally appeared before me, John J. Marshall, a justice of the peace for Orange county, Florida, Wm. D. Ward, of St. Lucia county, who testified under oath that he was possessed of all the articles included in the annexed schedule, and the estimate of their value is reasonable and just.

WM. D. WARD.

Sworn and subscribed before me, March 1, 1850.

JOHN J. MARSHALL, *J. P.*, [L. s.]
Orange county, Florida.

Personally appeared before me, John J. Marshall, a justice of the peace of Orange county, C. L. Brayton and Wm. Holdren, of St. Lucia county, who testified that they are acquainted with Wm. D. Ward, and the annexed list is correct according to the best of their knowledge and belief.

C. L. BRAYTON,
W. HOLDREN.

Sworn and subscribed before me, March 1, 1850.

JOHN J. MARSHALL, *J. P.*, [L. s.]
Orange county, Florida.

THE STATE OF TEXAS, *County of Starr*:

Before me, the undersigned, clerk of the district court in and for the county of Starr, State of Texas, this day appeared in person William S. Garner, to me well known as a credible witness—dark hair, dark eyes, light complexion, five feet seven inches in height, and born in the State of Pennsylvania; that he is now twenty-seven years of age: who, being duly sworn according to law, deposeth and sayeth: That he is well acquainted with Captain G. K. Lewis, a citizen of Cameron county, State of Texas, who now presents his claim against the government for spoliation committed upon his property by the Indians, who infested the country during the months of April, May, June, July, and August, of the year one thousand eight hundred and forty nine. He further states that he was living at the Salt Lake at the time the Indians made the attack; and knows, from his own personal knowledge, that the said G. K. Lewis lost all and everything of value to him, consisting in part of horses, mules, oxen, wagons, carts, and house furniture; and that his business was completely ruined for a long time; that all persons under his employ were obliged to leave the Salt Lake and seek shelter elsewhere; that the persons in company with the said G. K. Lewis endeavored to protect themselves from the attacks, but were overpowered by superior numbers, and yielded the premises, by flight at night, to the merciless Indian, who destroyed all and everything of value to the said Lewis, and those under his employ; and he further states that the said G. K. Lewis's loss exceeded the sum of five thousand dollars. And he further sayeth that he is not interested in said claim, in nowise whatever. Further sayeth not.

Sworn to, in open court, this 29th day of October, A. D. 1849; and, at the request of the said G. K. Lewis, I hereby certify to the same, and affix the seal of the district court of said county of Starr, State of Texas, in my official capacity.

WILLIAM S. GARNER.

THE STATE OF TEXAS, *County of Starr*:

Before me, district judge of the fourth judicial district, in the said State, personally appeared, this 29th October, 1849, the above-signed William S. Garner, who, being duly sworn, deposes the foregoing instrument to have been signed by him, and that the above is his signature.

[L. S.] In testimony whereof, I hereto subscribe my name, and affix the seal of my court, at Rio Grande City, this 29th October, 1849.

W. P. NORTON,
Judge, &c., &c., &c.

Attest:

E. R. HORD,
Deputy Clerk D. C. S. C.

ST. AUGUSTINE, *February 25, 1850.*

DEAR SIR: I have received from the Indian department the following:

“DEPARTMENT OF THE INTERIOR,
“Office of Indian Affairs, *February 14, 1850.*

“SIR: The Honorable the Secretary of the Interior has referred to this office a letter from you, dated in November last, enclosing claims of

William F. Russell, Thomas Hite, and the estate of John Barker, for losses sustained in consequence of an attack of a party of the Seminole Indians remaining in Florida.

"The only authority which this department has to act upon claims for losses and damages occasioned by depredations and attacks of Indians is the law of June 30, 1834, regulating trade and intercourse with the Indian tribes, which is not in force in Florida; and the only remedy for cases of the kind above referred to is the general power of Congress, to which body other claimants for injuries sustained from the Indians in Florida have appealed.

"The papers enclosed in your letter are herewith returned.

"ORLANDO BROWN.

"E. B. GOULD, &c."

The return of these papers was unexpected. I had confidently estimated the success of the course and direction given to them, and had hoped that the President would have given the proper directions to secure indemnity to the sufferers; but having failed, the only hope is from Congress; and in urging the passage of any act for indemnity I think it would be well to show that every effort had been made to make known the nature and existence of these claims to the government, and the refusal of the government to interfere.

Is there any hope from Congress, and can I give you further aid? The claim of Mr. Brayton is \$2,789 97.

Respectfully, &c.,

E. B. GOULD.

HON. D. L. YULEE, *Senator U. S., Washington.*

THE STATE OF TEXAS, *County of Starr:*

Before me, the undersigned, clerk of the district court for the county and State aforesaid, this day appeared in person Henry Clay Davis, esq., to me well known, as a credible witness, of black hair, dark eyes, dark complexion, five feet ten inches in height, "now senator in the legislature of the State of Texas from the counties of Cameron, Starr, and Webb, and proprietor of the town of Rio Grande City," who being duly sworn, deposeth and sayeth: That he was born in the county of Sanvern, in the State of Georgia; that he is now thirty-five years of age; and further sayeth that he is well acquainted with Captain G. K. Lewis, a citizen of Cameron county, State of Texas, who now presents his claim against the government for spoliation committed by the Indian savages who infested the country during the summer months of the year of our Lord one thousand eight hundred and forty-nine, "for the sum of five thousand dollars;" that said G. K. Lewis is, and has been, in the possession of a certain salt lake of great value, known and called by the name of "*Sal del Rey*," situate in the county of Cameron, and State of Texas, at which place he the said G. K. Lewis resided at the time of said depredations committed by the savages aforesaid, "and had in his employ a great number of persons as laborers at heavy expense, for the purpose of excavating and cleansing the salt for sale; and that during said summer months, as aforesaid, the county and immediate neighbor-

hood of said lake was overrun by large hordes of savage and hostile Indians, whose sole object was murder, rapine, and plunder, who then took possession of the country to a considerable extent, and drove the inhabitants, or a large portion of them, into Mexico, and took possession of everything of value to the citizens;" that said Indians made an attack upon said premises of him the said G. K. Lewis, and totally destroyed all and everything for the purposes above stated, so that the said G. K. Lewis was compelled to abandon his home and salt lake, and occupation, and surrender the same into the hands and at the mercy and destruction of the ruthless savage.

From my own personal knowledge of the number of hands employed, and the amount of property then in the hands of said G. K. Lewis, necessary for the purpose of conducting his business, he the said G. K. Lewis has been damaged to the amount of five thousand dollars, which he now claims, all in consequence of said depredations and overrunning of the country by the Indians; this deponent further says he is not interested in said claim in nowise whatever. Further sayeth not. Sworn to in open court this 29th day of October, A. D. 1849; and at the request of the said G. K. Lewis, I hereby certify to the same, and affix the seal of the district court of said county and State in my official capacity.

H. CLAY DAVIS.

THE STATE OF TEXAS, *County of Starr:*

Before me, judge of the fourth judicial district in the said State, personally appeared in the town of Rio Grande, on this the twenty-ninth day of October, A. D. 1849, H. Clay Davis, who being duly sworn, stated the foregoing signature to be his, and the foregoing instrument to have been signed by him for the purposes therein set forth.

In testimony of which, I have hereto caused the seal of the district court to be attached, and affix my signature, at Rio Grande City, [L. S.] this 29th October, 1849.

W. P. MORTON,
Judge, &c., &c.

Attest:

E. R. HORD,
Deputy Clerk D. C. S. C.

NEW SMYRNA, *March 24, 1850.*

DEAR SIR: I received yours of 28th February, and in answer will make a statement to you, and enclose in the letter a list of my losses sustained by the Indians last summer. The list was made out and sworn to by two of my neighbors, neither of them any relation of mine, and, am sorry to say, not very friendly to me on account of politics. They knew the damage the Indians did me as well as I did myself; they knew every article I had and lost; therefore I got them to appraise them, so that people would not say, hereafter, I made out a false account, as they have done others. I will give you a statement of my proceedings for the last six years. In

1842 I went to Indian river—the first settler there—and commenced building and clearing land. After I got some land cleared and fenced, and buildings up—which were a good frame house, well boarded and shingled, and kitchen, the same with good brick chimneys—I left my family there; chartered a vessel; loaded her with fish and oysters; went to Nassau, N. P.; sold out; visited all the Bahama islands; procured all the tropical fruits for the settlement; returned home; went to work clearing land and fencing; had a fine fruitery established. In 1848 I bought me a schooner in company with Mr. Brayton; I went to Havana after a load of the pines slip and other fruit trees, such as I could procure for the settlement. On my passage home was caught in a hurricane and lost my vessel, but saved the cargo on the beach. The schooner was called the James D. Westcott, jr. Not discouraged then, I still kept hard to work; made a fine crop of cane, corn, potatoes, rice, and a fine large garden; everything in a fair way to place me in easy circumstances in a few years, as some of my fruit trees had already begun to bear, although I had spent my last dollar when the Indians broke out. At that time I was gone from home, getting out shingles to build an addition to my house. My family were gone to Jacksonville on a visit. The Indians broke open my house first, and rifled it of all its contents—not even left me a change of clothes. The clothes I had on was all, and those of the poorest kind, as I were at work in a cypress swamp. All my bedding, tools, and everything, were taken away or destroyed; my fence was thrown down, and the crop and all of my fruit trees destroyed—over 300 in number. I had a fine orange grove, and lemon, a fine banak orchard, and plantain and pine apple, the three latter bearing; also figs, pomegranate, sapodilla, citron, conut trees in abundance, some of them eight feet high, all of which the cattle and hogs have destroyed, and left me without money or anything else. I feel anxious to go back, but my health is poor; and I have to support my family with my hard work, and it is impossible for me to lay up anything. I have no servants, and my wife's health is poor. If government would pay me for my loss—it is but small—it would enable me to return and go ahead; but, unless they do, I do not see what I shall do—it will always keep me poor. I have relations to assist me. If you can do anything for me there, it will put me in a way to live, and save me from being always poor. Write me if there is any prospect.

Your obedient servant,

WM. D. WARD.

To the Hon. D. L. YULEE.

THE STATE OF TEXAS, *County of Cameron:*

Before me, the undersigned, clerk of the district court in and for Starr county, Texas, appeared in person G. M. Armstrong, an attorney-at-law, and citizen of Brownsville, Cameron county, Texas, who in due form being duly sworn, deposeth: That he was born in Hancock county, in the State of Georgia—auburn hair, blue eyes, fair complexion, six feet high; that he is well acquainted with Captain G. K. Lewis, who now presents his claim to the Congress of the United States for remuneration for loss of property, &c., by the Indians, during the summer months of eighteen hundred and forty-nine; and that he knows of his own personal knowledge that

the said G. K. Lewis was at considerable expense in improving, and hiring of hands, purchase of horses, oxen, wagons, ploughs, hoes, axes, &c., &c., for the Salt lake; and that the Indians were in the vicinity of the "Sal del Rey" during said summer months; and that he has every reason to believe that said Indians did rob said G. K. Lewis of his property as aforesaid, and verily believes that he, the said G. K. Lewis, has been injured five thousand dollars in consequence of said facts. He further sayeth that he is not interested in this matter in nowise, and that he is now thirty-three years old; and further this deponent sayeth not.

G. M. ARMSTRONG.

THE STATE OF TEXAS, *County of Starr:*

Before me, the undersigned, clerk of the district court of the said county, personally appeared the aforesigned G. M. Armstrong, to me well known, who, being duly sworn, states the foregoing signature to be his, and that the foregoing instrument was granted by him for the purposes therein set forth; and that the facts therein set forth are true.

[L. s.] Given under my hand and official seal at Rio Grande City, Starr county, Texas, this 30th October, 1849.

W. G. JOHNSON,

Clerk D. C. S. C.

by E. B. HORD, *Deputy.*

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The undersigned, members of, and delegates from, the Cherokee and Creek nations of Indians, beg leave respectfully to call your attention to a measure which has passed one of your honorable bodies—the Senate—and which, if it become a law in its present shape, will inflict the greatest injustice on the tribes to which the undersigned belong, as well as others west of the Mississippi river, and be fraught with the most serious and mischievous consequences.

On the 23d instant, the honorable Senate passed a bill making applicable in all respects the provisions of the act of June 30, 1834, regulating trade and intercourse with the Indian tribes, "to cases of Indian depredations committed in Alabama, Georgia, and Florida, subsequent to the 1st day of January, 1836, and in Texas subsequent to the date of her annexation." By the provisions of the 17th section of the above-mentioned act, claims on account of Indian depredations are made payable out of the annuities of the nation or tribe to which the Indians belong that committed the depredations, if such nation or tribe have an annuity. This, therefore, is one of the provisions made applicable by the bill which has passed the Senate in the cases of Indian depredations for which it provides; and as the Cherokee and Creek nations have annuities, the consequence will be, if the bill become a law, that the claims for such depredations, so far as committed by persons belonging to those tribes, will be payable out of their annuities. The undersigned do not wish to be understood as objecting to any just and proper provision being made for such claims: their object is simply to show the great injustice and wrong of making them

payable out of the annuities of their people, and the evil consequences that may result therefrom.

It is well known that the Cherokee and Creek Indians—principally the latter—are charged with having committed the depredations in Georgia and Alabama that are alleged to have occurred subsequent to the 1st January, 1836, though we are satisfied that, if the truth could be arrived at, it would be found that many of them were the acts of renegade and reckless white men, who, in consequence of crimes committed, or dissatisfied with the restraints of the law and the usages of civilized society, intruded themselves and took up their residence within the country of the Indians, or on its borders. That depredations on the property of white persons were committed by the Indians after the time and within the States named, we do not pretend to deny; but, so far as the Cherokees and Creeks may have been concerned, this was done under peculiar and extraordinary circumstances, which should not only exempt the annuities of those tribes from the payment of claims therefor, but should enlist the kind sympathies and sense of justice of the people and government of the United States in favor of those suffering and oppressed people.

The limits of a paper like this will not admit, and the present occasion does not call for, a narrative of the hardships and sufferings to which the Cherokees and Creeks were subjected at the time, and for some years prior to their expulsion from the meagre remnant left them of their once extensive and magnificent domains east of the Mississippi river, over which a white population has spread itself, leaving scarce a trace of its original and once numerous and powerful owners. As the Creek nation are most concerned in regard to the provision made in the bill which has passed the Senate for depredations in Georgia and Alabama, we will confine ourselves to a brief statement of some of the facts and circumstances of their situation at the time those depredations are alleged to have taken place—which, we feel assured, will show the great injustice of charging these annuities with the claims thereof. Similar and equally strong reasons exist in the case of the Cherokees for exempting their annuities from any such charge on account of depredations that may be alleged to have been committed by members of that tribe.

For a long time prior to the treaty of 1832 with the Creeks, the government had been anxious to purchase out the remaining lands owned by them, and to provide for their emigration west of the Mississippi river; but to this those Indians were wholly averse, and no treaty providing absolutely for their removal could be made with them. To obviate this difficulty, the government proposed, in the negotiations which led to the treaty of 1832, to buy out their general or national title to all their lands east of the Mississippi, but to assign to every chief and head of an Indian family a portion of land for a residence, where they could remain as long as they chose—the chiefs to have a reservation of a full section, and the other heads of families one of half a section each, with the right to dispose thereof, with the approbation of the President, if they thought proper. If they continued to reside on these reservations for five years, they were to have patents given to them; and during that interval, the government obligated itself to keep intruders off their lands, and to prevent their being molested thereon. The Creeks agreed to these terms—thinking that, while complying with the wishes of the government as far as they could bring themselves to consent to do, they had secured comfortable homes,

where they could remain and live permanently and comfortably, like the whites. But in this they were fatally mistaken. The government also obligated itself to remove all intruders from the country of the Creeks, and to keep them therefrom until it had been surveyed and the reservations selected and assigned to those entitled to them. No sooner had the treaty of 1832, containing these provisions, been ratified and proclaimed, than white persons, in large numbers, commenced flocking into the country of the Indians, in order to select and take possession of the best lands; and there were cases in which the Indians were driven from their habitations and homes by these lawless people, and subjected to great suffering. This was, however, but a foretaste of what they were to be afterwards compelled to undergo. The government had to resort to military force to keep off these intruders, some of whom resisted; and in one case bloodshed and death were the result. This caused great excitement, and, to say the least, did not tend to conciliate the white population in favor of the Indians and the rights and privileges guaranteed to them by the treaty. The treaty required that the reservations to be given to the Indians should embrace their residences; and, as these were more or less improved, and therefore more valuable than the other lands, which were not, they immediately became the object of desire to the white people; and then commenced one of the most stupendous and unrighteous scenes of speculation, chicanery, and fraud against the poor, ignorant, and helpless Indians, which any portion of this country has ever witnessed. The treaty gave to the reservees the right to alienate their reservations, with the approbation of the President, who appointed agents to certify to the fairness of contracts made with them, and to see that they received a just compensation therefor. The history of the dark and shameful outrages which occurred in the purchase of these reservations is deeply written in the archives of the general government, and in the reports of the agents appointed by it to investigate them. The certifying agents of the government had great difficulties to contend with; and, in spite of every precaution they could adopt, large numbers of the Indians were robbed and despoiled of their lands. The agents could communicate with the Indians only through interpreters, and these were frequently bribed by the speculators, and the agents thus grossly imposed on. The Indians were debauched with liquor, and thus induced to sign contracts for their lands when they did not mean to sell, and this generally for a totally inadequate consideration; and when fair and *bona fide* purchases were made, and a just price paid to the reservee, in the presence of the agent, as the regulations required, she, if a woman, was afterwards waylaid and the money taken from her; and if a man, and this could not be done by force, he was seduced by liquor, and made drunk, in order to accomplish this infamous purpose. Many were defrauded out of their lands by the speculators bribing other and unprincipled Indians to personate them before the certifying agent; and in these and other unprincipled, corrupt, and wicked ways, large numbers of the Indians were deprived and turned out of their houses and possessions, without resource; and as the influx of the large number of white persons who came into the country caused the price of provisions of all kinds to be greatly enhanced beyond the means which the wronged and oppressed Indians had of procuring them, they were compelled to take them where and when they could, or starve. It is a well attested fact that there were cases in which they were subjected to so great a stress as to be compelled to take the inside bark of trees and steep it in water to

drink, as a substitute for food, and to prevent themselves and their wives and children from starving.

Being thus compelled by a stern and overruling necessity to depredate more or less upon the whites, the latter sought revenge, and to prevent a repetition of acts by punishing those they supposed to have been guilty of them; and in many instances innocent persons were thus made to suffer. This led to retaliation on the part of the Indians, and finally caused a portion of the tribe, galled and enfuried by the wrongs and outrages perpetrated upon them, to array themselves in hostility against the whites. That we state only what are well known and ascertained facts, and that the hostilities with the Creeks in 1836 were mainly caused by the oppression and wrongs to which they were subjected, and the depredations they committed by the necessitous situation to which they were thereby reduced, we refer to the reports of Messrs. Crawford and Balch, the commissioners sent out by the government to inquire into the causes of those hostilities, and to investigate the frauds committed upon the Creeks in the alienation of their reservations. (See document 154, 2d session 24th Congress.) Notwithstanding these outrages and wrongs, four-fifths of the nation remained friendly, and united heartily with the forces of the United States in suppressing hostilities, and continued with them until the whole of those who were hostile were removed. This commendable conduct, however, did not save them from the fate of their hostile brethren; for, though the treaty provided that none of the Creeks should be compelled to move west of the Mississippi, and give them the right to remain on their reservations, they also were forced to go at the point of the bayonet, and compelled, many of them, to make a forced sale of their lands to a speculating company at a great sacrifice. Whole towns of them were mustered out of the United States service and forced into camps for emigration, without even being permitted to go and visit their families.

We present this simple and truthful statement for the consideration of your honorable bodies; and we cannot but express the confident hope, that in framing a law making provision for the payment of claims on account of the depredations referred to, you will perceive the impropriety and injustice of making our annuities liable for them. From the report of the commissioners appointed in 1837 to collect information in relation to the depredations alleged to have been committed by the Creek Indians, it will be seen that the claims presented to them amounted to nearly \$1,300,000, and that those they reported favorably upon amounted to over \$350,000. (See executive document No. 127, 2d session 25th Congress.) This would sweep away the whole of the annuities of the Creeks for many years.

In regard to the depredations in Texas, we beg leave to state that there are a number of each of our tribes in that State, who are spoken of in a communication accompanying the last annual report of the Commissioner of Indian Affairs, from Captain A. G. Cartlett, a gentleman stated to be well informed on Indian matters in Texas, as being mischievous and deeply concerned in the depredations and outrages committed on the whites. These people long since separated from us: they were the less civilized portion of those who first emigrated, many years ago, west of the Mississippi river; and who, being unwilling to settle down quietly on the lands assigned them by the government and improve their condition by regular occupation and labor, wandered off when the game began to

become scarce, to indulge their predominant habits of war and the chase. They have no present connexion with us, and we can exercise no control over them; and it would therefore be unjust to make us and our means responsible and liable for the depredations they have committed or may commit in Texas, which we apprehend will be the case if the bill which has passed the Senate becomes a law. To show that we have cause for apprehension on this subject, we need only state that Captain Cartlett considers these Indians and others—members of other tribes—who in like manner have wandered off and settled in Texas, as being principally concerned in committing most of the depredations there; and that, as was ascertained by a committee of the Texas legislature, the depredations within the last year alone amounted, as we are informed, to one or more hundred thousand dollars. To subject us to a charge on account of the depredations committed in Texas would therefore be ruinous; and to make our annuities liable for any of those provided for in the Senate bill would, we humbly submit, be not only unjust, but, as we have intimated, be attended with very serious consequences.

We have settled in new and unimproved countries, with everything to be done in the way of improvement to make us comfortable, and to accomplish this object we need all our means and resources. We have submitted to great sacrifices and hardships, and been subjected to heavy expenses; and many of our people have been compelled to go in debt to traders and others for the necessaries of life, and for the means, tools, stock, &c., to commence agricultural and other pursuits, and they rely on the annuities to aid them in discharging their debts, and in further improving their condition, which, in most cases, is but little advanced beyond the first step in civilization. To take from us our annuities, or a considerable portion of them every year, which would be the case for a number of years at least if they were made liable for the depredations in question, would subject our people not only to great inconvenience, and, in many cases, to suffering, but it would discourage and throw them back where they started; and under feelings of exasperation, and a sense of injustice, if not from necessity, they, or some of them, might be induced to commit depredations on the white frontier inhabitants, which would lead to serious difficulties, which we and the authorities of our nation would seriously deplore.

For the foregoing, and other reasons that might be mentioned, we therefore humbly pray that the provisions of the bill to which we have referred may be so altered as not to make our annuities liable for the charges which we are advised and apprehend it will subject them to in its present form. And we appeal to your honorable bodies with the greater boldness because we are satisfied that it was not the intention of the Senate to make our annuities liable, an amendment offered by the honorable chairman of the Committee on Indian Affairs, Judge Atchison, while the bill was under discussion, having been adopted with great unanimity, expressly exempting our annuities from all charge for the depredations intended to be provided for in the bill.

Respectfully submitted:

JOHN DREW,
DAVID VANN,
WM. P. ROSS,

Cherokee Delegation.

B. MARSHALL,
DAVID BARNETT,
G. W. STIDHAM,
LEWIS McINTOSH,

Creek Delegation.

Writ of error to the superior court for the county of Gwinnett, in the State of Georgia, in the case of Worcester vs. The State of Georgia.

This was a writ of error to the superior court for the county of Gwinnett, in the State of Georgia.

On the 22d December, 1830, the legislature of the State of Georgia passed the following act:

"An act to prevent the exercise of assumed and arbitrary power, by all persons, under pretext of authority from the Cherokee Indians and their laws, and to prevent white persons from residing within that part of the chartered limits of Georgia occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory.

"Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same, that, after the 1st day of February, 1831, it shall not be lawful for any person or persons, under color or pretence of authority from said Cherokee tribe, or as headmen, chiefs or warriors of said tribe, to cause or procure by any means the assembling of any council or other pretended legislative body of said Indians or others living among them, for the purpose of legislating (or for any other purpose whatever.) And persons offending against the provisions of this section shall be guilty of a high misdemeanor, and subject to indictment therefor, and, on conviction, shall be punished by confinement at hard labor in the penitentiary for the space of four years.

"Sec. 2. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons, under pretext of authority from the Cherokee tribe, or as representatives, chiefs, headmen, or warriors of the said tribe, to meet or assemble as a council, assembly, convention, or in any other capacity, for the purpose of making laws, orders or regulations for said tribe. And all persons offending against the provisions of this section shall be guilty of a high misdemeanor, and subject to an indictment, and, on conviction thereof, shall undergo an imprisonment in the penitentiary at hard labor for the space of four years.

"Sec. 3. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons, under color or by authority of the Cherokee tribe, or any of its laws or regulations, to hold any court or tribunal whatever, for the purpose of hearing and determining causes, either civil or criminal; or to give any judgment in such causes, or to issue, or cause to issue, any process against the person or property of any of said tribe. And all persons offending against the provisions of this section shall be guilty of a high misdemeanor, and subject to indictment, and, on conviction thereof, shall be imprisoned in the penitentiary at hard labor for the space of four years.

"Sec. 4. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons, as a ministerial officer, or in any other capacity, to execute any precept, command or process issued by any court or tribunal in the Cherokee tribe, on the persons or property of any of said tribe. And all persons offending against the provisions of this section shall be guilty of a trespass, and sub-

ject to indictment, and, on conviction thereof, shall be punished by fine and imprisonment in the jail or in the penitentiary, not longer than four years, at the discretion of the court.

"Sec. 5. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons to confiscate, or attempt to confiscate, or otherwise to cause a forfeiture of the property or estate of any Indian of said tribe, in consequence of his enrolling himself and family for emigration, or offering to enrol for emigration, or any other act of said Indian, in furtherance of his intention to emigrate. And persons offending against the provisions of this section shall be guilty of a high misdemeanor, and, on conviction, shall undergo an imprisonment in the penitentiary at hard labor for the space of four years.

"Sec. 6. And be it further enacted by the authority aforesaid, that none of the provisions of this act shall be so construed as to prevent said tribe, its headmen, chiefs or other representatives, from meeting any agent or commissioner, on the part of this State or the United States, for any purpose whatever.

"Sec. 7. And be it further enacted by the authority aforesaid, that all white persons residing within the limits of the Cherokee nation on the 1st day of March next, or at any time thereafter, without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by confinement to the penitentiary at hard labor for a term not less than four years; provided, that the provisions of this section shall not be so construed as to extend to any authorized agent or agents of the government of the United States or of this State, or to any person or persons who may rent any of those improvements which have been abandoned by Indians who have emigrated west of the Mississippi; provided, nothing contained in this section shall be so construed as to extend to white females, and all male children under twenty-one years of age.

"Sec. 8. And be it further enacted by the authority aforesaid, that all white persons, citizens of the State of Georgia, who have procured a license in writing from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, to reside within the limits of the Cherokee nation, and who have taken the following oath, viz: 'I, A. B., do solemnly swear (or affirm, as the case may be) that I will support and defend the constitution and laws of the State of Georgia, and uprightly demean myself as a citizen thereof—so help me God,' shall be, and the same are hereby declared, exempt and free from the operation of the seventh section of this act.

"Sec. 9. And be it further enacted, that his excellency the governor be, and he is hereby, authorized to grant licenses to reside within the limits of the Cherokee nation, according to the provisions of the eighth section of this act.

"Sec. 10. And be it further enacted by the authority aforesaid, that no person shall collect or claim any toll from any person, for passing any turnpike gate or toll-bridge, by authority of any act or law of the Cherokee tribe, or any chief or headman or men of the same.

"Sec. 11. And be it further enacted by the authority aforesaid, that his excellency the governor be, and he is hereby, empowered, should he

deem it necessary, either for the protection of the mines, or for the enforcement of the laws of force within the Cherokee nation, to raise and organize a guard, to be employed on foot, or mounted, as occasion may require, which shall not consist of more than sixty persons, which guard shall be under the command of the commissioner or agent appointed by the governor, to protect the mines, with power to dismiss from the service any member of said guard, on paying the wages due for services rendered, for disorderly conduct, and make appointments to fill the vacancies occasioned by such dismissal.

"Sec. 12. And be it further enacted by the authority aforesaid, that each person who may belong to said guard shall receive for his compensation at the rate of fifteen dollars per month when on foot, and at the rate of twenty dollars per month when mounted, for every month that such person is engaged in actual service; and, in the event that the commissioner or agent, herein referred to, should die, resign, or fail to perform the duties herein required of him, his excellency the governor is hereby authorized and required to appoint, in his stead, some other fit and proper person to the command of said guard; and the commissioner or agent having the command of the guard aforesaid, for the better discipline thereof, shall appoint three sergeants, who shall receive at the rate of twenty dollars per month while serving on foot, and twenty-five dollars per month when mounted, as compensation whilst in actual service.

"Sec. 13. And be it further enacted by the authority aforesaid, that the said guard, or any member of them, shall be, and they are hereby, authorized and empowered to arrest any person legally charged with, or detected in, a violation of the laws of this State, and to convey, as soon as practicable, the person so arrested before a justice of the peace, judge of the superior or justice of inferior court of this State, to be dealt with according to law; and the pay and support of said guard be provided out of the fund already appropriated for the protection of the gold mines."

The legislature of Georgia, on the 19th December, 1829, passed the following act:

"An act to add the territory lying within the chartered limits of Georgia, and now in the occupancy of the Cherokee Indians, to the counties of Carrol, De Kalb, Gwinnett, Hall, and Habersham, and to extend the laws of this State over the same, and to annul all laws and ordinances made by the Cherokee nation of Indians, and to provide for the compensation of officers serving legal process in said territory, and to regulate the testimony of Indians, and to repeal the ninth section of the act of 1828 upon this subject.

"Sec. 1. Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same, that from and after the passing of this act, all that part of the unlocated territory within the limits of this State, and which lies between the Alabama line and the old path leading from the Buzzard Roost, on the Chattahoochee, to Sally Hughes's, on the Hightower river; thence to Thomas Pelet's, on the old federal road; thence with said road to the Alabama line, be, and the same is hereby, added to, and shall become a part of, the county of Carroll.

"Sec. 2. And be it further enacted, that all that part of said territory lying and being north of the last mentioned line, and south of the road

running from Charles Gait's ferry, on the Chattahoochee river, to Dick Roe's, to where it intersects with the path aforesaid, be, and the same is hereby, added to, and shall become a part of, the county of De Kalb.

"Sec. 3. And be it further enacted, that all that part of the said territory lying north of the last mentioned line, and south of a line commencing at the mouth of Baldrige's creek; thence up said creek to its source; from thence to where the federal road crosses the Hightower; thence with said road to the Tennessee line, be, and the same is hereby, added to, and shall become part of, the county of Gwinnett.

"Sec. 4. And be it further enacted, that all that part of the said territory lying north of said last mentioned line, and south of a line to commence on the Chestatee river, at the mouth of Yoholo creek; thence up said creek to the top of the Blue ridge; thence to the headwaters of Notley river; thence down said river to the boundary line of Georgia, be, and the same is hereby, added to, and shall become a part of, the county of Hall.

"Sec. 5. And be it further enacted, that all that part of said territory lying north of said last mentioned line, within the limits of this State, be, and the same is hereby, added to, and shall become a part of, the county of Habersham.

"Sec. 6. And be it further enacted, that all the laws, both civil and criminal, of this State, be, and the same are hereby, extended over said portions of territory, respectively; and all persons whatever, residing within the same, shall, after the 1st day of June next, be subject and liable to the operation of said laws, in the same manner as other citizens of this State, or the citizens of said counties, respectively; and all writs and processes whatever, issued by the courts or officers of said courts, shall extend over, and operate on, the portions of territory hereby added to the same, respectively.

"Sec. 7. And be it further enacted, that after the 1st day of June next, all laws, ordinances, orders and regulations, of any kind whatever, made, passed or enacted, by the Cherokee Indians, either in general council or in any other way whatever, or by any authority whatever of said tribe, be, and the same are hereby declared to be, null and void, and of no effect, as if the same had never existed; and in all cases of indictment or civil suits, it shall not be lawful for the defendant to justify under any of said laws, ordinances, orders or regulations; nor shall the courts of this State permit the same to be given in evidence on the trial of any suit whatever.

"Sec. 8. And be it further enacted, that it shall not be lawful for any person or body of persons, by arbitrary power or by virtue of any pretended rule, ordinance, law or custom of said Cherokee nation, to prevent by threats, menaces or other means, or endeavor to prevent any Indian of said nation, residing within the chartered limits of this State, from enrolling as an emigrant, or actually emigrating or removing from said nation; nor shall it be lawful for any person or body of persons, by arbitrary power or by virtue of any pretended rule, ordinance, law or custom of said nation, to punish in any manner, or to molest either the person or property, or to abridge the rights or privileges of any Indian, for enrolling his or her name as an emigrant, or for emigrating or intending to emigrate, from said nation.

"Sec. 9. And be it further enacted, that any person or body of persons

offending against the provisions of the foregoing section shall be guilty of a high misdemeanor, subject to indictment, and on conviction shall be punished by confinement in the common jail of any county of this State, or by confinement at hard labor in the penitentiary, for a term not exceeding four years, at the discretion of the court.

"Sec. 10. And be it further enacted, that it shall not be lawful for any person or body of persons, by arbitrary power, or under color of any pretended rule, ordinance, law or custom of said nation, to prevent or offer to prevent, or deter any Indian headman, chief or warrior of said nation, residing within the chartered limits of this State, from selling or ceding to the United States, for the use of Georgia, the whole or any part of said territory, or to prevent or offer to prevent any Indian, headman, chief or warrior of said nation, residing as aforesaid, from meeting in council or treaty any commissioner or commissioners on the part of the United States, for any purpose whatever.

"Sec. 11. And be it further enacted, that any person or body of persons offending against the provisions of the foregoing sections shall be guilty of a high misdemeanor, subject to indictment, and on conviction shall be confined at hard labor in the penitentiary for not less than four nor longer than six years, at the discretion of the court.

"Sec. 12. And be it further enacted, that it shall not be lawful for any person or body of persons, by arbitrary force, or under color of any pretended rules, ordinances, law or custom of said nation, to take the life of any Indian residing as aforesaid, for enlisting as an emigrant; attempting to emigrate; ceding, or attempting to cede, as aforesaid, the whole or any part of the said territory; or meeting or attempting to meet, in treaty or in council, as aforesaid, any commissioner or commissioners aforesaid; and any person or body of persons offending against the provisions of this section shall be guilty of murder, subject to indictment, and, on conviction, shall suffer death by hanging.

"Sec. 13. And be it further enacted, that, should any of the foregoing offences be committed under color of any pretended rules, ordinances, custom or law of said nation, all persons acting therein, either as individuals or as pretended executive, ministerial or judicial officers, shall be deemed and considered as principals, and subject to the pains and penalties hereinbefore described.

"Sec. 14. And be it further enacted, that for all demands which may come within the jurisdiction of a magistrate's court, suit may be brought for the same in the nearest district of the county to which the territory is hereby annexed; and all officers serving any legal process on any person living on any portion of the territory herein named, shall be entitled to recover the sum of five cents for every mile he may ride to serve the same, after crossing the present limits of the said counties, in addition to the fees already allowed by law; and in case any of the said officers should be resisted in the execution of any legal process issued by any court or magistrate, justice of the inferior court, or judge of the superior court of any of said counties, he is hereby authorized to call out a sufficient number of the militia of said counties to aid and protect him in the execution of this duty.

"Sec. 15. And be it further enacted, that no Indian or descendant of any Indian, residing within the Creek or Cherokee nation of Indians, shall be deemed a competent witness in any court of this State to which

a white person may be a party, except such white person resides within the said nation."

In September, 1831, the grand jurors for the county of Gwinnett, in the State of Georgia, presented to the superior court of the county the following indictment:

"Georgia, Gwinnett county:—The grand jurors, sworn, chosen and selected for the county of Gwinnett, in the name and behalf of the citizens of Georgia, charge and accuse Elizur Butler, Samuel A. Worcester, James Trott, Samuel Mays, Surry Eaton, Austin Copeland, and Edward D. Losure, white persons of said county, with the offence of 'residing within the limits of the Cherokee nation without a license:' for that the said Elizur Butler, Samuel A. Worcester, James Trott, Samuel Mays, Surry Eaton, Austin Copeland, and Edward D. Losure, white persons, as aforesaid, on the 15th day of July, 1831, *did reside* in that part of the Cherokee nation attached by the laws of said State to the said county, and in the county aforesaid, without a license or permit from his excellency the governor of said State, or from any agent authorized by his excellency the governor aforesaid to grant such permit or license, and without having taken the oath to support and defend the constitution and laws of the State of Georgia, and uprightly demean themselves as citizens thereof, contrary to the laws of said State, the good order, peace and dignity thereof."

To this indictment, the plaintiff in error pleaded specially, as follows:

"And the said Samuel A. Worcester, in his own proper person, comes and says, that this court ought not to take further cognizance of the action and prosecution aforesaid, because, he says that, on the 15th day of July, in the year 1831, he was, and still is, a resident in the Cherokee nation; and that the said supposed crime, or crimes, and each of them, were committed, if committed at all, at the town of New Echota, in the said Cherokee nation, out of the jurisdiction of this court, and not in the county of Gwinnett, or elsewhere within the jurisdiction of this court. And this defendant saith, that he is a citizen of the State of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States and has not since been required by him to leave it; that he was, at the time of his arrest, engaged in preaching the gospel to the Cherokee Indians, and in translating the sacred Scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the government of the United States for the civilization and improvement of the Indians; and that his residence there, for this purpose, is the residence charged in the aforesaid indictment; and this defendant further saith, that this prosecution the State of Georgia ought not to have or maintain, because, he saith that several treaties have, from time to time, been entered into between the United States and the Cherokee nation, to wit: at Hopewell, on the 28th day of November, 1785; at Holston, on the 2d day of July, 1791; at Philadelphia, on the 26th day of June, 1794; at Tellico, on the 2d day of October, 1798; at Tellico, on the 24th day of October, 1804; at Tellico, on the 25th day of October, 1805; at Tellico, on the 27th day of October, 1805; at Washington city, on the 7th day of January, 1805; at Washington city, on the 22d day of March,

1816; at the Chickasaw Council House, on the 14th day of September, 1816; at the Cherokee Agency, on the 8th day of July, 1817; and at Washington city, on the 27th day of February, 1819: all which treaties have been duly ratified by the Senate of the United States of America; and by which treaties the United States of America acknowledge the said Cherokee nation to be a sovereign nation, authorized to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several States composing the United States of America, in reference to acts done within their own territory; and, by which treaties, the whole of the territory now occupied by the Cherokee nation, on the east of the Mississippi, has been solemnly guarantied to them; all of which treaties are existing treaties at this day, and in full force. By these treaties, and particularly by the treaties of Hopewell and Holston, the aforesaid territory is acknowledged to lie without the jurisdiction of the several States composing the union of the United States; and, it is thereby specially stipulated, that the citizens of the United States shall not enter the aforesaid territory, even on a visit, without a passport from the governor of a State, or from some one duly authorized thereto by the President of the United States: all of which will more fully and at large appear by reference to the aforesaid treaties. And this defendant saith, that the several acts charged in the bill of indictment were done or omitted to be done, if at all, within the said territory so recognised as belonging to the said nation, and so, as aforesaid, held by them, under the guarantee of the United States; that for those acts the defendant is not amenable to the laws of Georgia, nor to the jurisdiction of the courts of the said State: and that the laws of the State of Georgia, which profess to add the said territory to the several adjacent counties of the said State, and to extend the laws of Georgia over the said territory, and persons inhabiting the same, and in particular the act on which this indictment against this defendant is grounded, to wit: an act entitled 'An act to prevent the exercise of assumed and arbitrary power, by all persons, under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing within that part of the chartered limits of Georgia occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory,' are repugnant to the aforesaid treaties; which, according to the constitution of the United States, compose a part of the supreme law of the land; and that these laws of Georgia are, therefore, unconstitutional, void, and of no effect; that the said laws of Georgia are also unconstitutional and void, because they impair the obligation of the various contracts formed by and between the aforesaid Cherokee nation and the said United States of America, as above recited; also, that the said laws of Georgia are unconstitutional and void, because they interfere with, and attempt to regulate and control the intercourse with the said Cherokee nation, which, by the said constitution, belongs exclusively to the Congress of the United States; and because the said laws are repugnant to the statute of the United States, passed on the — day of March, 1802, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;' and that, therefore, this court has no jurisdiction to cause this defendant to make further or other answer to the said bill of indictment, or further to try and punish this defendant for the said supposed offence or offences al-

leged in the bill of indictment, or any of them; and, therefore, this defendant prays judgment whether he shall be bound to answer further to said indictment."

This plea was overruled by the court, and the jurisdiction of the superior court of the county of Gwinnett was sustained by the judgment of the court.

The defendant was then arraigned, and pleaded "not guilty;" and the case came on for trial on the 15th of September, 1831, when the jury found the defendants in the indictment guilty. On the same day the court pronounced sentence on the parties so convicted, as follows:

"The State v. B. F. Thompson and others. Indictment for residing in the Cherokee nation without license. Verdict, guilty."

"The State v. Elizur Butler, Samuel A. Worcester and others. Indictment for residing in the Cherokee nation without license. Verdict, guilty."

"The defendants, in both of the above cases, shall be kept in close custody by the sheriff of this county, until they can be transported to the penitentiary of this State, and the keeper thereof is hereby directed to receive them, and each of them, into his custody, and keep them, and each of them, at hard labor in said penitentiary, for and during the term of four years."

A writ of error was issued on the application of the plaintiff in error, on the 27th of October, 1831, which, with the following proceedings thereon, was returned to this court:

"United States of America, ss.—The President of the United States to the honorable the judges of the superior court for the county of Gwinnett, in the State of Georgia, greeting:

"Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court, for the county of Gwinnett, before you, or some of you, between the State of Georgia, plaintiff, and Samuel A. Worcester, defendant, on an indictment, being the highest court of law in said State in which a decision could be had in said suit, a manifest error hath happened, to the great damage of the said Samuel A. Worcester, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

"Witness the Honorable John Marshall, Chief Justice of the said Supreme Court, the first Monday of August, in the year of our Lord one thousand eight hundred and thirty-one.

WM. THOS. CARROLL,

Clerk of the Supreme Court of the United States.

"Allowed by HENRY BALDWIN.

"United States of America to the State of Georgia, greeting:

"You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the superior court for the county of Gwinnett, in the State of Georgia, wherein Samuel A. Worcester is plaintiff in error, and the State of Georgia is defendant in error, to show cause, if any there be, why judgment rendered against the said Samuel A. Worcester, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

"Witness the Honorable Henry Baldwin, one of the justices of the Supreme Court of the United States, this 27th day of October, in the year of our Lord one thousand eight hundred and thirty-one.

HENRY BALDWIN.

"State of Georgia, county of Gwinnett, sct.—On this 26th day of November, in the year of our Lord eighteen hundred and thirty-one, William Potter personally appeared before the subscriber, John Mills, a justice of the peace in and for said county, and being duly sworn on the holy evangelists of Almighty God, deposeth and saith, that on the 24th day of November instant he delivered a true copy of the within citation to his excellency Wilson Lumpkin, governor of the State of Georgia, and another true copy thereof he delivered, on the 22d day of November instant, to Charles J. Jenkins, esq., attorney general of the State aforesaid, showing to the said governor and attorney general, respectively, at the times of delivery herein stated, the within citation.

WM. POTTER.

"Sworn to and subscribed before me, the day and year above written.

JOHN MILLS, J. P."

This writ of error was returned to the Supreme Court with copies of all the proceedings in the superior court of the county of Gwinnett, as stated, and accompanied with certificates of the clerk of that court in the following terms:

"Georgia, Gwinnett county.—I, John G. Park, clerk of the superior court of the county of Gwinnett, and State aforesaid, do certify that the annexed and foregoing is a full and complete exemplification of the proceedings and judgments had in said court against Samuel A. Worcester, one of the defendants in the case therein mentioned, as they remain of record in the said superior court.

"Given under my hand, and seal of the court, this 28th day of November, 1831.

JOHN G. PARK, *Clrk.*

"I also certify that the original bond, of which a copy is annexed (the bond was in the usual form,) and also a copy of the annexed writ of error, were duly deposited and filed in the clerk's office of said court, on the 10th day of November, in the year of our Lord eighteen hundred and thirty one.

"Given under my hand and seal aforesaid, the day and date above written.

JOHN G. PARK, *Clerk.*"

The case of *Elizur Butler*, plaintiff in error, v. *The State of Georgia*, was brought before the Supreme Court in the same manner.

The case was argued for the plaintiffs in error by Mr. Sergeant and Mr. Wirt, with whom also was Mr. Elisha W. Chester.

The following positions were laid down and supported by Mr. Sergeant and Mr. Wirt:

1. That the court had jurisdiction of the question brought before them by the writ of error, and the jurisdiction extended equally to criminal and to civil cases.

2. That the writ of error was duly issued, and duly returned, so as to bring the question regularly before the court, under the constitution and laws of the United States, and oblige the court to take cognizance of it.

2. That the statute of Georgia under which the plaintiffs in error were indicted and convicted, was unconstitutional and void. Because—

1. By the constitution of the United States, the establishment and regulation of intercourse with the Indians belonged exclusively to the government of the United States.

2. The power thus given, exclusively, to the government of the United States, had been exercised by treaties and by acts of Congress, now in force, and applying directly to the case of the *Cherokees*; and that no State could interfere, without a manifest violation of such treaties and laws, which by the constitution were the supreme law of the land.

3. The statute of Georgia assumed the power to change these regulations and laws; to prohibit that which they permitted; and to make that criminal which they declared innocent or meritorious; and to subject to condemnation and punishment, free citizens of the United States who had committed no offence.

4. That the indictment, conviction, and sentence being founded upon a statute of Georgia, which was unconstitutional and void, were themselves also void and of no effect, and ought to be reversed.

These several positions were supported, enforced and illustrated by argument and authority.

The following authorities were referred to:

2 Laws U. S. 65, sect. 25; Judiciary act of 1789; *Miller v. Nicols*, 4 Wheat. 311; *Craig v. State of Missouri*, 4 Peters, 400, 429; *Fisher v. Cockerell*, 5 Peters, 248; *Ex parte Kearny*, 7 Wheat. 38; *Cohens v. Virginia*, 6 Wheat. 264; *Martin v. Hunter*, 1 Wheat. 304, 315, 361; 1 Laws U. S. 488, 470, 472, 482, 484, 486, 453; *Blunt's Historical Sketch*, 106, 107; *Treaties with the Cherokees*, 28th Nov., 1785, 2d July, 1791, 26th July, 1794, 2d Oct., 1798; 3 Laws U. S. 27, 125, 284, 303, 344, 460; 12 Journ. Congress, 82; *Blunt's Hist. Sketch*, 113, 110, 111, 114; *Federalist*, No. 42; 1 Laws U. S. 454; *Holland v. Pack*, *Peck's Rep.* 151; *Johnson v. M'Intosh*, 8 Wheat. 543; *Cherokee Nation v. State of Georgia*, 5 Peters, 1, 16, 27, 31, 48; *Ware v. Hylton*, 3 Dall. 199; *Hughes v. Edwards*, 9 Wheat. 489; *Fisher v. Hamden*, 1 Paine, 55; *Hamilton v. Eaton*, *North Carolina Cases*, 79; *M'Cullough v. State of Maryland*, 4 Wheat. 316; 2 Laws U. S. 121; 3 Laws U. S. 460; 6 Laws U. S. 750; *Gibbon v. Ogden*, 9 Wheat. 1.

Mr. Chief Justice Marshall delivered the opinion of the court:

This cause, in every point of view in which it can be placed, is of the deepest interest.

The defendant is a State, a member of the Union, which has exercised

the powers of government over a people who deny its jurisdiction, and are under the protection of the United States.

The plaintiff is a citizen of the State of Vermont, condemned to hard labor for four years in the penitentiary of Georgia, under color of an act which he alleges to be repugnant to the constitution, laws, and treaties of the United States.

The legislative power of a State, the controlling power of the constitution and laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful people, the personal liberty of a citizen, are all involved in the subject now to be considered.

It behooves this court in every case, more especially in this, to examine into its jurisdiction with scrutinizing eyes, before it proceeds to the exercise of a power which is controverted.

The first step in the performance of this duty is the inquiry whether the record is properly before the court.

It is certified by the clerk of the court which pronounced the judgment of condemnation under which the plaintiff in error is imprisoned, and is also authenticated by the seal of the court. It is returned with, and annexed to, a writ of error issued in regular form, the citation being signed by one of the associate justices of the Supreme Court, and served on the governor and attorney general of the State, more than thirty days before the commencement of the term to which the writ of error was returnable.

The judicial act (sec. 22, 25, 2 Laws U. S. 64, 65,) so far as it prescribes the mode of proceeding, appears to have been literally pursued.

In February, 1797, a rule (6 Wheat., Rules) was made on this subject, in the following words: "It is ordered by the court, that the clerk of the court to which any writ of error shall be directed may make return of the same by transmitting a true copy of the record, and of all proceedings in the same, under his hand and the seal of the court."

This has been done. But the signature of the judge has not been added to that of the clerk. The law does not require it. The rule does not require it.

In the case of *Martin v. Hunter's Lessee*, 1 Wheat. 304, 361, an exception was taken to the return of the refusal of the State court to enter a prior judgment of reversal by this court, because it was not made by the judge of the State court to which the writ was directed; but the exception was overruled, and the return was held sufficient. In *Buel v. Van Ness*, 8 Wheat. 312, also a writ of error to a State court, the record was authenticated in the same manner. No exception was taken to it. These were civil cases. But it has been truly said at the bar, that, in regard to this process, the law makes no distinction between a criminal and civil case. The same return is required in both. If the sanction of the court be necessary for the establishment of this position, it has been silently given.

M'Culloch v. The State of Maryland, 4 Wheat. 316, was a *qui tam* action, brought to recover a penalty, and the record was authenticated by the seal of the court and the signature of the clerk, without that of a judge. *Brown et al. v. The State of Maryland* was an indictment for a fine and forfeiture. The record in this case, too, was authenticated by the seal of the court and the certificate of the clerk. The practice is both ways.

The record, then, according to the judiciary act, and the rule and the practice of the court, is regularly before us. The more important inquiry is, does it exhibit a case cognizable by this tribunal?

The indictment charges the plaintiff in error, and others, being white persons, with the offence of "residing within the limits of the Cherokee nation without a license," and "without having taken the oath to support and defend the constitution and laws of the State of Georgia."

The defendant in the State court appeared in proper person, and filed the following plea:

"And the said Samuel A. Worcester, in his own proper person, comes and says, that this court ought not to take further cognizance of the action and prosecution aforesaid, because, he says that, on the 15th day of July, in the year 1831, he was, and still is, a resident in the Cherokee nation; and that the said supposed crime or crimes, and each of them, were committed, if committed at all, at the town of New Echota, in the said Cherokee nation, out of the jurisdiction of this court, and not in the county of Gwinnett, or elsewhere within the jurisdiction of this court: and this defendant further saith, that he is a citizen of the State of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and has not since been required by him to leave it; that he was, at the time of his arrest, engaged in preaching the gospel to the Cherokee Indians, and in translating the sacred scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the government of the United States for the civilization and improvement of the Indians; and that his residence there, for this purpose, is the residence charged in the aforesaid indictment: and this defendant further saith, that this prosecution the State of Georgia ought not to have or maintain, because, he saith that several treaties have, from time to time, been entered into between the United States and the Cherokee nation of Indians, to wit: at Hopewell, on the 28th day of November, 1785; at Holston, on the 2d day of July, 1791; at Philadelphia, on the 26th day of June, 1794; at Tellico, on the 2d day of October, 1798; at Tellico, on the 24th day of October, 1804; at Tellico, on the 25th day of October, 1805; at Tellico, on the 27th day of October, 1805; at Washington city, on the 7th day of January, 1805; at Washington city, on the 22d day of March, 1816; at the Chickasaw Council House, on the 14th day of September, 1816; at the Cherokee Agency, on the 8th day of July, 1817; and at Washington city, on the 27th day of February, 1819: all which treaties have been duly ratified by the Senate of the United States of America; and by which treaties the United States of America acknowledge the said Cherokee nation to be a sovereign nation, authorized to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several States composing the United States of America, in reference to acts done within their own territory; and by which treaties the whole of the territory now occupied by the Cherokee nation, on the east of the Mississippi, has been solemnly guarantied to them; all of which treaties are existing treaties at this day, and in full force. By these treaties, and particularly by the treaties of Hopewell and Holston, the aforesaid territory is acknowledged to lie

without the jurisdiction of the several States composing the Union of the United States; and it is thereby specially stipulated that the citizens of the United States shall not enter the aforesaid territory, even on a visit, without a passport from the governor of a State, or from some one duly authorized thereto, by the President of the United States; all of which will more fully and at large appear by reference to the aforesaid treaties. And this defendant saith, that the several acts charged in the bill of indictment were done, or omitted to be done, if at all, within the said territory so recognised as belonging to the said nation, and so as aforesaid held by them, under the guarantee of the United States; that, for those acts the defendant is not amenable to the laws of Georgia, nor to the jurisdiction of the courts of the said State; and that the laws of the State of Georgia, which profess to add the said territory to the several adjacent counties of the said State, and to extend the laws of Georgia over the said territory, and persons inhabiting the same, and in particular the act on which this indictment against this defendant is grounded, to wit: an act entitled 'An act to prevent the exercise of assumed and arbitrary power, by all persons, under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing within that part of the chartered limits of Georgia occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory,' are repugnant to the aforesaid treaties; which, according to the constitution of the United States, compose a part of the supreme law of the land; and that these laws of Georgia are, therefore, unconstitutional, void, and of no effect; that the said laws of Georgia are also unconstitutional and void, because they impair the obligation of the various contracts formed by and between the aforesaid Cherokee nation and the said United States of America, as above recited: also, that the said laws of Georgia are unconstitutional and void, because they interfere with, and attempt to regulate and control the intercourse with the said Cherokee nation, which, by the said constitution, belongs exclusively to the Congress of the United States; and because the said laws are repugnant to the statute of the United States, passed on the ——— day of March, 1802, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers:' and that, therefore, this court has no jurisdiction to cause this defendant to make further or other answer to the said bill of indictment, or further to try and punish this defendant for the said supposed offence or offences alleged in the bill of indictment, or any of them; and, therefore, this defendant prays judgment whether he shall be held bound to answer further to said indictment."

This plea was overruled by the court. And the prisoner, being arraigned, pleaded not guilty. The jury found a verdict against him, and the court sentenced him to hard labor, in a penitentiary, for the term of four years.

By overruling this plea, the court decided that the matter it contained was not a bar to the action. The plea, therefore, must be examined, for the purpose of determining whether it makes a case which brings the party within the provisions of the twenty fifth section of the "act to establish the judicial courts of the United States."

The plea avers that the residence charged in the indictment was under the authority of the President of the United States, and with the

permission and approval of the Cherokee nation; that the treaties subsisting between the United States and the Cherokees acknowledge their right, as a sovereign nation, to govern themselves and all persons who have settled within their territory, free from any legislative interference by the several States composing the United States of America; that the act under which the prosecution was instituted is repugnant to the said treaties, and is, therefore, unconstitutional and void. That the said act is also unconstitutional, because it interferes with, and attempts to regulate and control, the intercourse with the Cherokee nation, which belongs exclusively to Congress; and because, also, it is repugnant to the statute of the United States entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers."

Let the averments of this plea be compared with the twenty fifth section of the judicial act.

That section enumerates the cases in which the final judgment or decree of a State court may be revised in the Supreme Court of the United States. These are, "where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party under such clause of the said constitution, treaty, statute or commission."

The indictment and plea in this case draw in question, we think, the validity of the treaties made by the United States with the Cherokee Indians. If not so, their construction is certainly drawn in question; and the decision has been, if not against their validity, "against the right, privilege or exemption, specially set up and claimed under them." They also draw into question the validity of a statute of the State of Georgia, "on the ground of its being repugnant to the constitution, treaties and laws of the United States, and the decision is in favor of its validity."

It is, then, we think, too clear for controversy that the act of Congress by which this court is constituted, has given it the power, and of course imposed on it the duty, of exercising jurisdiction in this case. This duty, however unpleasant, cannot be avoided. Those who fill the judicial department have no discretion in selecting the subjects to be brought before them. We must examine the defence set up in this plea. We must inquire and decide whether the act of the legislature of Georgia, under which the plaintiff in error has been prosecuted and condemned, be consistent with, or repugnant to, the constitution, laws and treaties of the United States.

It has been said at the bar, that the acts of the legislature of Georgia seize on the whole Cherokee country, parcel it out among the neighboring counties of the State, extend her code over the whole country, abolish its institutions and its laws, and annihilate its political existence.

If this be the general effect of the system, let us inquire into the effect of the particular statute and section on which the indictment is founded.

It enacts that "all white persons residing within the limits of the

Cherokee nation on the 1st day of March next, or at any time thereafter, without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by confinement to the penitentiary, at hard labor, for a term not less than four years."

The eleventh section authorizes the governor, should he deem it necessary for the protection of the mines, or the enforcement of the laws in force within the Cherokee nation, to raise and organize a guard," &c.

The thirteenth section enacts, "that the said guard, or any member of them, shall be, and they are hereby, authorized and empowered to arrest any person legally charged with or detected in a violation of the laws of this State, and to convey, as soon as practicable, the person so arrested, before a justice of the peace, judge of the superior or justice of inferior court of this State, to be dealt with according to law."

The extra territorial power of every legislature being limited, in its action, to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee nation, and of the rights and powers consequent on jurisdiction.

The first step, then, in the inquiry, which the constitution and laws impose on this court, is an examination of the rightfulness of this claim.

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre existing rights of its ancient possessors.

After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this western world. They found it in possession of a people who had made small progress in agriculture or manufactures, and whose general employment was war, hunting, and fishing.

Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?

But power, war, conquest, give rights, which, after possession, are conceded by the world, and which can never be controverted by those on whom they descend. We proceed, then, to the actual state of things, having glanced at their origin; because holding it in our recollection might shed some light on existing pretensions.

The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of

any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was, "that discovery gave title to the government by whose subjects or by whose authority it was made, against all other European governments, which title might be consummated by possession." 8 Wheat., 573.

This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements on it. It was an exclusive principle, which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell.

The relation between the Europeans and the natives was determined in each case by the particular government which asserted and could maintain this pre-emptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political; but no attempt, so far as is known, has been made to enlarge them. So far as they existed merely in theory, or were in their nature only exclusive of the claims of other European nations, they still retain their original character, and remain dormant. So far as they have been practically exerted, they exist in fact—are understood by both parties; are asserted by the one, and admitted by the other.

Soon after Great Britain determined on planting colonies in America, the king granted charters to companies of his subjects who associated for the purpose of carrying the views of the crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country. They purport, generally, to convey the soil from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea that the feeble settlements made on the seacoast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The crown could not be understood to grant what the crown could not affect to claim; nor was it so understood.

The power of making war is conferred by these charters on the colonies, but *defensive* war alone seems to have been contemplated. In the first charter to the first and second colonies, they are empowered, "for their several *defences*, to encounter, expulse, repel, and resist, all persons who shall, without license," attempt to inhabit "within the said precincts and limits of the said several colonies, or that shall enterprise or attempt, at

any time hereafter, the least detriment or annoyance of the said several colonies or plantations."

The charter to Connecticut concludes a general power to make defensive war with these terms: "and upon *just causes* to invade and destroy the natives or other enemies of the said colony."

The same power, in the same words, is conferred on the government of Rhode Island.

This power to repel invasion, and, upon just cause, to invade and destroy the natives, authorizes offensive as well as defensive war, but only "on just cause." The very terms imply the existence of a country to be invaded, and of an enemy who has given just cause of war.

The charter to William Penn contains the following recital: "and because, in so remote a country, near so many barbarous nations, the incursions as well of the savages themselves, as of other enemies, pirates, and robbers, may probably be feared, therefore we have given," &c. The instrument then confers the power of war.

These barbarous nations, whose incursions we feared, and to repel whose incursions the power to make war was given, were surely not considered as the subjects of Penn, or occupying his lands during his pleasure.

The same clause is introduced into the charter to Lord Baltimore.

The charter to Georgia professes to be granted for the charitable purpose of enabling poor subjects to gain a comfortable subsistence by cultivating lands in the American provinces, "at present waste and desolate." It recites: "and whereas our provinces in North America have been frequently ravaged by Indian enemies, more especially that of South Carolina, which, in the late war by the neighboring savages, was laid waste by fire and sword, and great numbers of the English inhabitants miserably massacred; and our loving subjects, who now inhabit there, by reason of the smallness of their numbers, will, in case of any new war, be exposed to the like calamities, inasmuch as their whole southern frontier continueth unsettled, and lieth open to the said savages."

These motives for planting the new colony are incompatible with the lofty ideas of granting the soil, and all its inhabitants, from sea to sea. They demonstrate the truth, that these grants asserted a title against Europeans only, and were considered as blank paper so far as the rights of the natives were concerned. The power of war is given only for defence, not for conquest.

The charters contain passages showing one of their objects to be the civilization of the Indians, and their conversion to Christianity—objects to be accomplished by conciliatory conduct and good example; not by extermination.

The actual state of things, and the practice of European nations, on so much of the American continent as lies between the Mississippi and the Atlantic, explain their claims, and the charters they granted. Their pretensions unavoidably interfered with each other; though the discovery of one was admitted by all to exclude the claim of any other, the extent of that discovery was the subject of unceasing contest. Bloody conflicts arose between them, which gave importance and security to the neighboring nations. Fierce and warlike in their character, they might be formidable enemies, or effective friends. Instead of rousing their resentments, by asserting claims to their lands, or to dominion over their per-

sons, their alliance was sought by flattering professions, and purchased by rich presents. The English, the French, and the Spaniards, were equally competitors for their friendship and their aid. Not well acquainted with the exact meaning of words, nor supposing it to be material whether they were called the subjects or the children of their father in Europe—lavish in professions of duty and affection, in return for the rich presents they received—so long as their actual independence was untouched, and their right to self government acknowledged, they were willing to profess dependence on the power which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country: and this was probably the sense in which the term was understood by them.

Certain it is, that our history furnishes no example, from the first settlement of our country, of any attempt on the part of the crown to interfere with the internal affairs of the Indians, farther than to keep out the agents of foreign powers, who, as traders or otherwise, might seduce them into foreign alliances. The king purchased their lands when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies; but never intruded into the interior of their affairs, or interfered with their self government, so far as respected themselves only.

The general views of Great Britain, with regard to the Indians, were detailed by Mr. Stuart, superintendent of Indian affairs, in a speech delivered at Mobile, in presence of several persons of distinction, soon after the peace of 1763. Towards the conclusion he says: "Lastly, I inform you that it is the king's order to all his governors and subjects to treat Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly, all individuals are prohibited from purchasing any of your lands; but, as you know that, as your white brethren cannot feed you when you visit them unless you give them ground to plant, it is expected that you will cede lands to the king for that purpose. But, whenever you shall be pleased to surrender any of your territories to his majesty, it must be done, for the future, at a public meeting of your nation, when the governors of the provinces or the superintendent shall be present, and obtain the consent of all your people. The boundaries of your hunting-grounds will be accurately fixed, and no settlement permitted to be made upon them. As you may be assured that all treaties with your people will be faithfully kept, so it is expected that you, also, will be careful strictly to observe them."

The proclamation issued by the king of Great Britain, in 1763, soon after the ratification of the articles of peace, forbids the governors of any of the colonies to grant warrants of survey, or pass patents upon any lands whatever, which, not having been ceded to or purchased by us (the king,) as aforesaid, are reserved to the said Indians, or any of them.

The proclamation proceeds: "and we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve, under our sovereignty, protection, and dominion, for the use of the said Indians, all the lands and territories lying to the westward of the rivers which fall into the sea from the west and northwest, as aforesaid: and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and license for that purpose first obtained.

"And we do further strictly enjoin and require all persons whatever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians, as aforesaid, forthwith to remove themselves from such settlements."

A proclamation issued by Governor Gage, in 1772, contains the following passage: "Whereas many persons, contrary to the positive orders of the king, upon this subject, have undertaken to make settlements beyond the boundaries fixed by the treaties made with the Indian nations, which boundaries ought to serve as a barrier between the whites and the said nations, particularly on the Ouabache." The proclamation orders such persons to quit those countries without delay.

Such was the policy of Great Britain towards the Indian nations inhabiting the territory from which she excluded all other Europeans; such her claims, and such her practical expositions of the charters she had granted: she considered them as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection; and she made treaties with them, the obligation of which she acknowledged.

This was the settled state of things when the war of our Revolution commenced. The influence of our enemy was established; her resources enabled her to keep up that influence; and the colonists had much cause for the apprehension that the Indian nations would, as the allies of Great Britain, add their arms to hers. This, as was to be expected, became an object of great solicitude to Congress. Far from advancing a claim to their lands, or asserting any right of dominion over them, Congress resolved "that the securing and preserving the friendship of the Indian nations appears to be a subject of the utmost moment to these colonies."

The early journals of Congress exhibit the most anxious desire to conciliate the Indian nations. Three Indian departments were established; and commissioners appointed in each, "to treat with the Indians in their respective departments, in the name and on behalf of the United Colonies, in order to preserve peace and friendship with the said Indians, and to prevent their taking any part in the present commotions."

The most strenuous exertions were made to procure those supplies on which Indian friendships were supposed to depend; and everything which might excite hostility was avoided.

The first treaty was made with the Delawares, in September, 1778.

The language of equality in which it is drawn evinces the temper with which the negotiation was undertaken, and the opinion which then prevailed in the United States.

"1. That all offences or acts of hostilities, by one or either of the contracting parties against the other, be mutually forgiven, and buried in the depth of oblivion, never more to be had in remembrance.

"2. That a perpetual peace and friendship shall, from henceforth, take place and subsist between the contracting parties aforesaid, through all succeeding generations: and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other, in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation," &c.

3. The third article stipulates, among other things, a free passage for

the American troops through the Delaware nation, and engages that they shall be furnished with provisions and other necessities at their value.

"4. For the better security of the peace and friendship now entered into by the contracting parties against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders, by imprisonment or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs, and usages of the contracting parties, and natural justice," &c.

5. The fifth article regulates the trade between the contracting parties, in a manner entirely equal.

6. The sixth article is entitled to peculiar attention, as it contains a disclaimer of designs which were, at that time, ascribed to the United States by their enemies, and from the imputation of which Congress was then peculiarly anxious to free the government. It is in these words: "Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion that it is the design of the States aforesaid to extirpate the Indians, and take possession of their country, to obviate such false suggestions the United States do engage to guaranty to the aforesaid nation of Delawares, and their heirs, all their territorial rights, in the fullest and most ample manner, as it hath been bounded by former treaties, as long as the said Delaware nation shall abide by, and hold fast, the chain of friendship now entered into."

The parties further agree, that other tribes, friendly to the interest of the United States, may be invited to form a State, whereof the Delaware nation shall be the heads, and have a representation in Congress.

This treaty, in its language and in its provisions, is formed, as near as may be, on the model of treaties between the crowned heads of Europe.

The sixth article shows how Congress then treated the injurious calumny of cherishing designs unfriendly to the political and civil rights of the Indians.

During the war of the Revolution, the Cherokees took part with the British. After its termination, the United States, though desirous of peace, did not feel its necessity so strongly as while the war continued. Their political situation being changed, they might very well think it advisable to assume a higher tone, and to impress on the Cherokees the same respect for Congress which was before felt for the king of Great Britain.

This may account for the language of the treaty of Hopewell. There is the more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them.

The treaty is introduced with the declaration, that "the commissioners plenipotentiary of the United States give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions."

When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the Cherokees? We may ask further: did the Cherokees

come to the seat of the American government to solicit peace, or did the American commissioners go to them to obtain it? The treaty was made at Hopewell, not at New York. The word "give," then, has no real importance attached to it.

The first and second articles stipulate for the mutual restoration of prisoners, and are of course equal.

The third article acknowledges the Cherokees to be under the protection of the United States of America, and of no other power.

This stipulation is found in Indian treaties generally. It was introduced into their treaties with Great Britain, and may probably be found in those with other European powers. Its origin may be traced to the nature of their connexion with those powers; and its true meaning is discerned in their relative situation.

The general law of European sovereigns, respecting their claims in America, limited the intercourse of Indians, in a great degree, to the particular potentate whose ultimate right of domain was acknowledged by the others. This was the general state of things in time of peace. It was sometimes changed in war. The consequence was, that their supplies were derived chiefly from that nation, and their trade confined to it. Goods, indispensable to their comfort, in the shape of presents, were received from the same hand. What was of still more importance, the strong hand of government was interposed to restrain the disorderly and licentious from intrusions into their country, from encroachments on their lands, and from those acts of violence which were often attended by reciprocal murder. The Indians perceived in this protection only what was beneficial to themselves—an engagement to punish aggressions on them. It involved, practically, no claim to their lands, no dominion over their persons. It merely bound the nation to the British crown, as a dependent ally, claiming the protection of a powerful friend and neighbor, and receiving the advantages of that protection, without involving a surrender of their national character.

This is the true meaning of the stipulation, and is undoubtedly the sense in which it was made. Neither the British government, nor the Cherokees, ever understood it otherwise.

The same stipulation entered into with the United States is undoubtedly to be construed in the same manner. They receive the Cherokee nation into their favor and protection. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other power. Protection does not imply the destruction of the protected. The manner in which this stipulation was understood by the American government, is explained by the language and acts of our first President.

The fourth article draws the boundary between the Indians and the citizens of the United States. But, in describing this boundary, the term "allotted" and the term "hunting ground" are used.

Is it reasonable to suppose that the Indians, who could not write, and most probably could not read—who certainly were not critical judges of our language—should distinguish the word "allotted" from the words "marked out?" The actual subject of contract was the dividing line between the two nations, and their attention may very well be supposed to have been confined to that subject. When, in fact, they were ceding lands to the United States, and describing the extent of their cession, it may very well be supposed that they might not understand the term em-

ployed, as indicating that, instead of granting, they were receiving lands. If the term would admit of no other signification, which is not conceded, its being misunderstood is so apparent, results so necessarily from the whole transaction, that it must, we think, be taken in the sense in which it was most obviously used.

So with respect to the words "hunting grounds." Hunting was at that time the principal occupation of the Indians, and their land was more used for that purpose than for any other. It could not, however, be supposed that any intention existed of restricting the full use of the lands they reserved.

To the United States, it could be a matter of no concern whether their whole territory was devoted to hunting grounds, or whether an occasional village, and an occasional corn-field, interrupted, and gave some variety to the scene.

These terms had been used in their treaties with Great Britain, and had never been misunderstood. They had never been supposed to imply a right in the British government to take their lands, or to interfere with their internal government.

The fifth article withdraws the protection of the United States from any citizen who has settled, or shall settle, on the lands allotted to the Indians, for their hunting grounds; and stipulates that, if he shall not remove within six months, the Indians may punish him.

The sixth and seventh articles stipulate for the punishment of the citizens of either country who may commit offences on or against the citizens of the other. The only inference to be drawn from them is, that the United States considered the Cherokees as a nation.

The ninth article is in these words: "For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade with the Indians, and *managing all their affairs*, as they think proper."

To construe the expression "managing all their affairs" into a surrender of self-government, would be, we think, a perversion of their necessary meaning, and a departure from the construction which has been uniformly put on them. The great subject of the article is the Indian trade. The influence it gave, made it desirable that Congress should possess it. The commissioners brought forward the claim, with the profession that their motive was "the benefit and comfort of the Indians, and the prevention of injuries or oppressions." This may be true, as respects the regulation of their trade, and as respects the regulation of all affairs connected with their trade, but cannot be true as respects the management of all their affairs. The most important of these are the cession of their lands, and security against intruders on them. Is it credible, that they should have considered themselves as surrendering to the United States the right to dictate their future cessions, and the terms on which they should be made? or to compel their submission to the violence of disorderly and licentious intruders? It is equally inconceivable that they could have supposed themselves, by a phrase thus slipped into an article, on another and most interesting subject, to have divested themselves of the right of self-government on subjects not connected with trade. Such a measure could not be "for their benefit and comfort," or for "the prevention of injuries and oppression." Such a

construction would be inconsistent with the spirit of this and of all subsequent treaties; especially of those articles which recognise the right of the Cherokees to declare hostilities, and to make war. It would convert a treaty of peace covertly into an act annihilating the political existence of one of the parties. Had such a result been intended, it would have been openly avowed.

This treaty contains a few terms capable of being used in a sense which could not have been intended at the time, and which is inconsistent with the practical construction which has always been put on them; but its essential articles treat the Cherokees as a nation capable of maintaining the relations of peace and war; and ascertain the boundaries between them and the United States.

The treaty of Hopewell seems not to have established a solid peace. To accommodate the differences still existing between the State of Georgia and the Cherokee nation, the treaty of Holston was negotiated in July, 1791. The existing constitution of the United States had been then adopted, and the government, having more intrinsic capacity to enforce its just claims, was perhaps less mindful of high-sounding expressions, denoting superiority. We hear no more of giving peace to the Cherokees. The mutual desire of establishing permanent peace and friendship, and of removing all causes of war, is honestly avowed, and, in pursuance of this desire, the first article declares that there shall be perpetual peace and friendship between all the citizens of the United States of America and all the individuals composing the Cherokee nation.

The second article repeats the important acknowledgment, that the Cherokee nation is under the protection of the United States of America, and of no other sovereign whatsoever.

The meaning of this has been already explained. The Indian nations were, from their situation, necessarily dependent on some foreign potentate for the supply of their essential wants, and for their protection from lawless and injurious intrusions into their country. That power was naturally termed their protector. They had been arranged under the protection of Great Britain: but the extinguishment of the British power in their neighborhood, and the establishment of that of the United States in its place, led naturally to the declaration, on the part of the Cherokees, that they were under the protection of the United States, and of no other power. They assumed the relation with the United States which had before subsisted with Great Britain.

This relation was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master.

The third article contains a perfectly equal stipulation for the surrender of prisoners.

The fourth article declares, that "the boundary between the United States and the Cherokee nation shall be as follows: beginning," &c. We hear no more of "allotments" or of "hunting grounds." A boundary is described, between nation and nation, by mutual consent. The national character of each, the ability of each to establish this boundary, is acknowledged by the other. To preclude forever all disputes, it is agreed that it shall be plainly marked by commissioners, to be appointed by each party; and, in order to extinguish forever all claim of the Cherokees to the ceded lands, an additional consideration is to be paid by the United

States. For this additional consideration the Cherokees release all right to the ceded land, forever.

By the fifth article, the Cherokees allow the United States a road through their country, and the navigation of the Tennessee river. The acceptance of these cessions is an acknowledgment of the right of the Cherokees to make or withhold them.

By the sixth article, it is agreed, on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade. No claim is made to the management of all their affairs. This stipulation has already been explained. The observation may be repeated, that the stipulation is itself an admission of their right to make or refuse it.

By the seventh article the United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded.

The eighth article relinquishes to the Cherokees any citizens of the United States who may settle on their lands; and the ninth forbids any citizen of the United States to hunt on their lands, or to enter their country without a passport.

The remaining articles are equal, and contain stipulations which could be made only with a nation admitted to be capable of governing itself.

This treaty, thus explicitly recognising the national character of the Cherokees, and their right of self-government; thus guarantying their lands; assuming the duty of protection, and of course pledging the faith of the United States for that protection, has been frequently renewed, and is now in full force.

To the general pledge of protection have been added several specific pledges, deemed valuable by the Indians. Some of these restrain the citizens of the United States from encroachments on the Cherokee country, and provide for the punishment of intruders.

From the commencement of our government, Congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.

In 1819, Congress passed an act for promoting those humane designs of civilizing the neighboring Indians which had long been cherished by the Executive. It enacts, "that, for the purpose of providing against the further decline and final extinction of the Indian tribes adjoining to the frontier settlements of the United States, and for introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced *with their own consent*, to employ capable persons, of good moral character, to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing and arithmetic; and for performing such other duties as may be enjoined, according to such instructions and rules

as the President may give and prescribe for the regulation of their conduct in the discharge of their duties."

This act avowedly contemplates the preservation of the Indian nations as an object sought by the United States, and proposes to effect this object by civilizing and converting them from hunters into agriculturists. Though the Cherokees had already made considerable progress in this improvement, it cannot be doubted that the general words of the act comprehend them. Their advance in the "habits and arts of civilization," rather encouraged perseverance in the laudable exertions still further to meliorate their condition. This act furnishes strong additional evidence of a settled purpose to fix the Indians in their country by giving them security at home.

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the government of the Union.

Is this the rightful exercise of power, or is it usurpation?

While these States were colonies, this power, in its utmost extent, was admitted to reside in the crown. When our revolutionary struggle commenced, Congress was composed of an assemblage of deputies acting under specific powers granted by the legislatures, or conventions of the several colonies. It was a great popular movement, not perfectly organized; nor were the respective powers of those who were intrusted with the management of affairs accurately defined. The necessities of our situation produced a general conviction that those measures which concerned all, must be transacted by a body in which the representatives of all were assembled, and which could command the confidence of all. Congress, therefore, was considered as invested with all the powers of war and peace, and Congress dissolved our connexion with the mother country, and declared these United Colonies to be independent States. Without any written definition of powers, they employed diplomatic agents to represent the United States at the several courts of Europe; offered to negotiate treaties with them, and did actually negotiate treaties with France. From the same necessity, and on the same principles, Congress assumed the management of Indian affairs; first in the name of these United Colonies; and afterwards, in the name of the United States. Early attempts were made at negotiation, and to regulate trade with them. These not proving successful, war was carried on under the direction and with the forces of the United States, and the efforts to make peace, by treaty, were earnest and incessant. The confederation found Congress in the exercise of the same powers of peace and war, in our relations with Indian nations, as with those of Europe.

Such was the state of things when the confederation was adopted. That instrument surrendered the powers of peace and war to Congress, and prohibited them to the States, respectively, unless a State be actually invaded, "or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of delay till the United States in Congress assembled can be consulted." This instrument also gave the United States in Congress assembled the sole and exclusive right of "regulating the trade and managing all the affairs with the Indians, not members of

any of the States: provided, that the legislative power of any State within its own limits be not infringed or violated."

The ambiguous phrases which follow the grant of power to the United States were so construed by the States of North Carolina and Georgia as to annul the power itself. The discontents and confusion resulting from these conflicting claims, produced representations to Congress, which were referred to a committee, who made their report in 1787. The report does not assent to the construction of the two States, but recommends an accommodation, by liberal cessions of territory, or by an admission, on their part, of the powers claimed by Congress. The correct exposition of this article is rendered unnecessary by the adoption of our existing constitution. That instrument confers on Congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several States, and *with the Indian tribes*. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions. The shackles imposed on this power, in the confederation, are discarded.

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Georgia, herself, has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister States, and by the government of the United States. Various acts of her legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their own consent: that their territory was separated from that of any State within whose chartered limits they might reside, by a boundary line, established by treaties: that, within their boundary, they possessed rights with which no State could interfere: and that the whole power of regulating the intercourse with them, was vested in the United States. A review of these acts, on the part of Georgia, would occupy too much time, and is the less necessary, because they have been accurately detailed in the argument at the bar. Her new series of laws, manifesting her abandonment of these opinions, appears to have commenced in December, 1828.

In opposition to the original right, possessed by the undisturbed occupants of every country; to this recognition of that right, which is evidenced by our history, in every change through which we have passed, are placed the charters granted by the monarch of a distant and distinct region, parcelling out a territory in possession of others whom we could remove and did not attempt to remove, and the cession made of his claims by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the king of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly asserted titles can derive no aid from the articles so often repeated in Indian treaties; extending to them, first, the protection of Great Britain, and afterwards that of the United States. These articles are associated with others recognising their title to self-government. The very fact of repeated treaties with them recognises it; and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence, its right to self government, by associating with a stronger, and taking its protection. A weak State, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a State. Examples of this kind are not wanting in Europe. "Tributary and feudatory States," says Vattel, "do not thereby cease to be sovereign and independent States, so long as self-government and sovereign and independent authority are left in the administration of the State." At the present day, more than one State may be considered as holding its right of self-government under the guarantee and protection of one or more allies.

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our constitution and laws, vested in the government of the United States.

The act of the State of Georgia under which the plaintiff in error was prosecuted is consequently void, and the judgment a nullity. Can this court revise and reverse it?

If the objection to the system of legislation, lately adopted by the legislature of Georgia, in relation to the Cherokee nation, was confined to its extra-territorial operation, the objection, though complete, so far as respected mere right, would give this court no power over the subject. But it goes much further. If the review which has been taken be correct—and we think it is—the acts of Georgia are repugnant to the constitution, laws, and treaties of the United States.

They interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, are committed exclusively to the government of the Union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens

from trespassing on it; and recognise the pre-existing power of the nation to govern itself.

They are in equal hostility with the acts of Congress for regulating this intercourse, and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff in error, who was residing in the nation with its permission, and by authority of the President of the United States, is also a violation of the acts which authorize the Chief Magistrate to exercise this authority.

Will these powerful considerations avail the plaintiff in error? We think they will. He was seized, and forcibly carried away, while under guardianship of treaties guarantying the country in which he resided, and taking it under the protection of the United States. He was seized while performing, under the sanction of the Chief Magistrate of the Union, those duties which the humane policy adopted by Congress had recommended. He was apprehended, tried, and condemned, under color of a law which has been shown to be repugnant to the constitution, laws, and treaties of the United States. Had a judgment liable to the same objections, been rendered for property, none would question the jurisdiction of this court. It cannot be less clear when the judgment affects personal liberty, and inflicts disgraceful punishment, if punishment could disgrace when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law than if it affected his property. He is not less entitled to the protection of the constitution, laws and treaties of his country.

This point has been elaborately argued, and, after deliberate consideration, decided, in the case of *Cohen v. the Commonwealth of Virginia*, 6 Wheat. 264.

It is the opinion of this court that the judgment of the superior court for the county of Gwinnett, in the State of Georgia, condemning Samuel A. Worcester to hard labor in the penitentiary of the State of Georgia, for four years, was pronounced by that court under color of a law which is void, as being repugnant to the constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled.

Mr. Justice *M'Lean*.—As this case involves principles of the highest importance, and may lead to consequences which shall have an enduring influence on the institutions of this country; and as there are some points in the case on which I wish to state, distinctly, my opinion, I embrace the privilege of doing so.

With the decision just given I concur.

The plaintiff in error was indicted under a law of Georgia, "for residing in that part of the Cherokee nation attached, by the laws of said State, to the county of Gwinnett, without a license or permit from his excellency the governor of the State, or from any agent authorized by his excellency the governor to grant such permit or license, and without having taken the oath to support and defend the constitution and laws of the State of Georgia, and uprightly to demean himself as a citizen thereof."

On this indictment the defendant was arrested, and, on being arraigned before the superior court for Gwinnett county, he filed, in substance, the following plea:

He admits that, on the 15th of July, 1831, he was, and still continued to be, a resident in the Cherokee nation, and that the crime, if any were committed, was committed at the town of New Echota, in said nation,

out of the jurisdiction of the court. That he is a citizen of Vermont, and that he entered the Indian country in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and has not since been required by him to leave it. That he was, at the time of his arrest, engaged in preaching the gospel to the Cherokee Indians, and in translating the sacred Scriptures into their language, with the permission and approval of the Cherokee nation, and in accordance with the humane policy of the government of the United States, for the improvement of the Indians.

He then states, as a bar to the prosecution, certain treaties made between the United States and the Cherokee Indians, by which the possession of the territory they now inhabit was solemnly guaranteed to them; and also a certain act of Congress, passed in March, 1802, entitled "An act to regulate trade and intercourse with the Indian tribes." He also alleges, that this subject, by the constitution of the United States, is exclusively vested in Congress; and that the law of Georgia, being repugnant to the constitution of the United States, to the treaties referred to, and to the act of Congress specified, is void, and cannot be enforced against him.

This plea was overruled by the court, and the defendant pleaded not guilty.

The jury returned a verdict of guilty; and the defendant was sentenced, by the court, to be kept in close custody by the sheriff of the county, until he could be transported to the penitentiary of the State, and the keeper thereof was directed to receive him into custody, and keep him at hard labor in the penitentiary during the term of four years.

Another individual was included in the same indictment, and joined in the plea to the jurisdiction of the court, and was also included in the sentence; but his name is not adverted to, because the principles of the case are fully presented in the above statement.

To reverse this judgment, a writ of error was obtained, which, having been returned, with the record of the proceedings, is now before this court.

The first question which it becomes necessary to examine, is, whether the record has been duly certified, so as to bring the proceedings regularly before this tribunal.

A writ of error was allowed, in this case, by one of the justices of this court, and the requisite security taken. A citation was also issued, in the form prescribed, to the State of Georgia, a true copy of which, as appears by the oath of William Patten, was delivered to the governor on the 24th day of November last; and another true copy was delivered, on the 22d day of the same month, to the attorney general of the State.

The record was returned by the clerk, under the seal of the court, who certifies that it is a full and complete exemplification of the proceedings and judgment had in the case; and he further certifies that the original bond, and a copy of the writ of error, were duly deposited and filed in the clerk's office of said court, on the 10th day of November last.

Is it necessary, in such a case, that the record should be certified by the judge who held the court?

In the case of *Martin v. Hunter's Lessee*, which was a writ of error to the court of appeals of Virginia, it was objected that the return to the

writ of error was defective, because the record was not so certified; but the court, in that case, said, "the forms of process, and the modes of proceeding in the exercise of jurisdiction, are, with few exceptions, left by the legislature to be regulated and changed as this court may, in its discretion, deem expedient." By a rule of this court, "the return of a copy of a record of the proper court, annexed to the writ of error, is declared to be a sufficient compliance with the mandate of the writ. The record, in this case, is duly certified by the clerk of the court of appeals, and annexed to the writ of error. The objection, therefore, which has been urged to the sufficiency of the return, cannot prevail."—1 Wheat., 304.

In 9 Wheat., 526, in the case of *Stewart v. Ingle and others*, which was a writ of error to the circuit court for the District of Columbia, a *certiorari* was issued, upon a suggestion of diminution in the record, which was returned by the clerk with another record; whereupon, a motion was made for a new *certiorari*, on the ground that the return ought to have been made by the judge of the court below, and not by the clerk. The writ of *certiorari*, it is known, like a writ of error, is directed to the court.

Mr. Justice Washington, after consultation with the judges, stated that, according to the rules and practice of the court, a return made by the clerk was a sufficient return.

To ascertain what has been the general course of practice on this subject, an examination has been made into the manner in which records have been certified from State courts to this court; and it appears that, in the year 1817, six causes were certified, in obedience to writs of error, by the clerk, under the seal of the court. In the year 1819, two were so certified, one of them being the case of *M'Cullogh v. the State of Maryland*.

In the year 1821, three cases were so certified; and in the year 1823, there was one. In 1827, there were five; and in the ensuing year, seven.

In the year 1830, there were eight causes so certified, in five of which a State was a party on the record. There were three causes thus certified in the year 1831, and five in the present year.

During the above periods, there were only fifteen causes from State courts, where the records were certified by the court or the presiding judge, and one of these was the case of *Cohens v. the State of Virginia*.

This court adopted the following rule on this subject in 1797:

"It is ordered by the court, that the clerk of the court to which any writ of error shall be directed may make the return of the same, by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the court."

The power of the court to adopt this rule cannot be questioned; and it seems to have regulated the practice ever since its adoption. In some cases, the certificate of the court, or the presiding judge, has been affixed to the record; but this court has decided, where the question has been raised, that such certificate is unnecessary.

So far as the authentication of the record is concerned, it is impossible to make a distinction between a civil and a criminal case. What may be sufficient to authenticate the proceedings in a civil case, must be equally so in a criminal one. The verity of the record is of as much importance in the one case as the other.

This is a question of practice; and it would seem that, if any one point in the practice of this court can be considered as settled, this one must be so considered.

In the progress of the investigation, the next inquiry which seems naturally to arise, is, whether this is a case in which a writ of error may be issued.

By the twenty-fifth section of the judiciary act of 1789, it is provided, "that a final judgment or decree in any suit in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption, specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed, in the Supreme Court of the United States."

Doubts have been expressed whether a writ of error to a State court is not limited to civil cases. These doubts could not have arisen from reading the above section. Is not a criminal case as much a suit as a civil case? What is a suit, but a prosecution? and can any one suppose that it was the intention of Congress, in using the word suit, to make a distinction between a civil prosecution and a criminal one?

It is more important that jurisdiction should be given to this court in criminal than in civil cases, under the twenty-fifth section of the judiciary act. Would it not be inconsistent, both with the spirit and letter of this law, to revise the judgment of a State court, in a matter of controversy respecting damages, where the decision is against a right asserted under the constitution or a law of the United States, but to deny the jurisdiction in a case where the property, the character, the liberty and life of a citizen may be destroyed, though protected by the solemn guaranties of the constitution?

But this is not an open question; it has long since been settled by the solemn adjudications of this court. The above construction, therefore, is sustained both on principle and authority. The provisions of the section apply as well to criminal as to civil cases, where the constitution, treaties, or laws of the United States come in conflict with the laws of a State; and the latter is sustained by the decision of the court.

It has been said, that this court can have no power to arrest the proceedings of a State tribunal in the enforcement of the criminal laws of the State. This is undoubtedly true, so long as a State court, in the execution of its penal laws, shall not infringe upon the constitution of the United States, or some treaty or law of the Union.

Suppose a State should make it penal for an officer of the United States to discharge his duties within its jurisdiction—as, for instance, a land officer, an officer of the customs, or a postmaster—and punish the offender by confinement in the penitentiary: could not the Supreme Court of the United States interpose their power, and arrest or reverse

the State proceedings? Cases of this kind are so palpable, that they need only to be stated to gain the assent of every judicious mind. And would not this be an interference with the administration of the criminal laws of a State?

This court have repeatedly decided, that they have no appellate jurisdiction in criminal cases from the circuit courts of the United States: writs of error and appeals are given from those courts only in civil cases.

But, even in those courts, where the judges are divided on any point, in a criminal case, the point may be brought before this court, under a general provision in cases of division of opinion.

Jurisdiction is taken in the case under consideration exclusively by the provisions of the twenty-fifth section of the law which has been quoted. These provisions, as has been remarked, apply, indiscriminately, to criminal and civil cases, wherever a right is claimed under the constitution, treaties, or laws of the United States, and the decision, by the State court, is against such right. In the present case, the decision was against the right expressly set up by the defendant, and it was made by the highest judicial tribunal of Georgia.

To give jurisdiction in such a case, this court need look no further than to ascertain whether the right, thus asserted, was decided against by the State court. The case is clear of difficulty on this point.

The name of the State of Georgia is used in this case, because such was the designation given to the cause in the State court. No one ever supposed that the State, in its sovereign capacity, in such a case, is a party to the cause. The form of the prosecution here must be the same as it was in the State court; but so far as the name of the State is used, it is matter of form. Under a rule of this court, notice was given to the governor and attorney general of the State, because it is a part of their duty to see that the laws of the State are executed.

In prosecutions for violations of the penal laws of the Union, the name of the United States is used in the same manner. Whether the prosecution be under a federal or State law, the defendant has a right to question the constitutionality of the law.

Can any doubt exist as to the power of Congress to pass the law, under which jurisdiction is taken in this case? Since its passage, in 1789, it has been the law of the land; and has been sanctioned by an uninterrupted course of decisions in this court, and acquiesced in by the State tribunals, with perhaps a solitary exception: and whenever the attention of the national legislature has been called to the subject, their sanction has been given to the law by so large a majority as to approach almost to unanimity.

Of the policy of this act there can be as little doubt as of the right of Congress to pass it.

The constitution of the United States was formed, not, in my opinion, as some have contended, by the people of the United States, nor, as others, by the States; but by a combined power, exercised by the people, through their delegates, limited in their sanctions to the respective States.

Had the constitution emanated from the people, and the States had been referred to, merely as convenient districts, by which the public expression could be ascertained, the popular vote throughout the Union would have been the only rule for the adoption of the constitution. This course was

not pursued; and in this fact, it clearly appears that our fundamental law was not formed, exclusively, by the popular suffrage of the people.

The vote of the people was limited to the respective States in which they resided. So that it appears there was an expression of popular suffrage and State sanction, most happily united, in the adoption of the constitution of the Union.

Whatever differences of opinion may exist as to the means by which the constitution was adopted, there would seem to be no ground for any difference as to certain powers conferred by it.

Three co-ordinate branches of the government were established: the executive, legislative, and judicial. These branches are essential to the existence of any free government, and that they should possess powers, in their respective spheres, co-extensive with each other.

If the Executive have not powers which will enable him to execute the functions of his office, the system is essentially defective; as those duties must, in such case, be discharged by one of the other branches. This would destroy that balance which is admitted to be essential to the existence of free government, by the wisest and most enlightened statesmen of the present day.

It is not less important that the legislative power should be exercised by the appropriate branch of the government, than that the executive duties should devolve upon the proper functionary. And if the judicial power fall short of giving effect to the laws of the Union, the existence of the federal government is at an end.

It is in vain, and worse than in vain, that the national legislature enact laws, if those laws are to remain upon the statute-book as monuments of the imbecility of the national power. It is in vain that the Executive is called to superintend the execution of the laws, if he have no power to aid in their enforcement.

Such weakness and folly are in no degree chargeable to the distinguished men through whose instrumentality the constitution was formed. The powers given, it is true, are limited; and no powers, which are not expressly given, can be exercised by the federal government: but, where given, they are supreme. Within the sphere allotted to them, the co-ordinate branches of the general government revolve, unobstructed by any legitimate exercise of power by the State governments. The powers exclusively given to the federal government are limitations upon the State authorities. But, with the exception of these limitations the States are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the State governments can arrest or obstruct the course of the national power.

It has been asserted that the federal government is foreign to the State governments; and that it must consequently be hostile to them. Such an opinion could not have resulted from a thorough investigation of the great principles which lie at the foundation of our system. The federal government is neither foreign to the State governments, nor is it hostile to them. It proceeds from the same people, and is as much under their control as the State governments.

Where, by the constitution, the power of legislation is exclusively vested in Congress, they legislate for the people of the Union, and their acts are as binding as are the constitutional enactments of a State legislature on the people of the State. If this were not so, the federal govern-

ment would exist only in name. Instead of being the proudest monument of human wisdom and patriotism, it would be the frail memorial of the ignorance and mental imbecility of its framers.

In the discharge of his constitutional duties, the federal Executive acts upon the people of the Union, the same as a governor of a State, in the performance of his duties, acts upon the people of the State. And the judicial power of the United States acts in the same manner on the people. It rests upon the same basis as the other departments of the government. The powers of each are derived from the same source, and are conferred by the same instrument. They have the same limitations and extent.

The supreme court of a State, when required to give effect to a statute of the State, will examine its constitution, which they are sworn to maintain, to see if the legislative act be repugnant to it; and if a repugnancy exist, the statute must yield to the paramount law.

The same principle governs the Supreme tribunal of the Union. No one can deny that the constitution of the United States is the supreme law of the land; and consequently, no act of any State legislature, or of Congress, which is repugnant to it, can be of any validity.

Now if an act of a State legislature be repugnant to the constitution of the State, the State court will declare it void; and if such be repugnant to the constitution of the Union, or a law made under that constitution, which is declared to be the supreme law of the land, is it not equally void? And, under such circumstances, if this court should shrink from a discharge of their duty, in giving effect to the supreme law of the land, would they not violate their oaths, prove traitors to the constitution, and forfeit all just claim to the public confidence?

It is sometimes objected, if the federal judiciary may declare an act of a State legislature void, because it is repugnant to the constitution of the United States, it places the legislation of a State within the power of this court. And might not the same argument be urged with equal force against the exercise of a similar power by the supreme court of a State? Such an argument must end in the destruction of all constitutions, and the will of the legislature, like the acts of the Parliament of Great Britain, must be the supreme and only law of the land.

It is impossible to guard an investiture of power so that it may not, in some form, be abused: an argument, therefore, against the exercise of power, because it is liable to abuse, would go to the destruction of all governments.

The powers of this court are expressly, not constructively, given by the constitution; and within this delegation of power, this court are the supreme court of the people of the United States, and they are bound to discharge their duties, under the same responsibilities as the supreme court of a State, and are equally, within their powers, the supreme court of the people of each State.

When this court are required to enforce the laws of any State, they are governed by those laws. So closely do they adhere to this rule, that during the present term, a judgment of a circuit court of the United States, made in pursuance of decisions of this court, has been reversed and annulled, because it did not conform to the decisions of the State court in giving a construction to a local law. But while this court conforms its decisions to those of the State courts, on all questions arising

under the statutes and constitutions of the respective States, they are bound to revise and correct those decisions, if they annul either the constitution of the United States or the laws made under it.

It appears, then, that on all questions arising under the laws of a State, the decisions of the courts of such State form a rule for the decisions of this court; and that on all questions arising under the laws of the United States, the decisions of this court form a rule for the decisions of the State courts. Is there anything unreasonable in this? Have not the federal, as well as the State courts, been constituted by the people? Why, then, should one tribunal more than the other be deemed hostile to the interests of the people?

In the second section of the third article of the constitution, it is declared, that "the judicial power shall extend to all cases, in law and equity, arising under the constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Having shown that a writ of error will lie in this case, and that the record has been duly certified, the next inquiry that arises is, what are the acts of the United States which relate to the Cherokee Indians and the acts of Georgia; and were these acts of the United States sanctioned by the federal constitution?

Among the enumerated powers of Congress, contained in the eighth section of the first article of the constitution, it is declared "that Congress shall have power to regulate commerce with foreign nations, and among the Indian tribes." By the articles of confederation, which were adopted on the 9th day of July, 1778, it was provided "that the United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and management of all affairs with the Indians, not members of any of the States: *Provided*, That the legislative right of any State, within its own limits, be not infringed or violated."

As early as June, 1775, and before the adoption of the articles of confederation, Congress took into their consideration the subject of Indian affairs. The Indian country was divided into three departments, and the superintendence of each was committed to commissioners, who were authorized to hold treaties with the Indians, make disbursements of money for their use, and to discharge various duties, designed to preserve peace and cultivate a friendly feeling with them towards the colonies. No person was permitted to trade with them without a license from one or more of the commissioners of the respective departments.

In April, 1776, it was "resolved, that the commissioners of Indian affairs in the middle department, or any one of them, be desired to employ, for reasonable salaries, a minister of the gospel, to reside among the Delaware Indians, and instruct them in the Christian religion; a schoolmaster, to teach their youth reading, writing, and arithmetic; also, a blacksmith, to do the work of the Indians." The general intercourse with the Indians continued to be managed under the superintendence of the continental Congress.

On the 28th of November, 1785, the treaty of Hopewell was formed, which was the first treaty made with the Cherokee Indians. The commissioners of the United States were required to give notice to the ex-

executives of Virginia, North Carolina, South Carolina and Georgia, in order that each might appoint one or more persons to attend the treaty, but they seem to have had no power to act on the occasion.

In this treaty it is stipulated; that "the commissioners plenipotentiary of the United States, in Congress assembled, give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions:"

1. The Cherokees to restore all prisoners and property taken during the war.

2. The United States to restore to the Cherokees all prisoners.

3. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other sovereign whatsoever.

4. The boundary line between the Cherokees and the citizens of the United States was agreed to as designated.

5. If any person, not being an Indian, intrude upon the land "allotted" to the Indians, or, being settled on it, shall refuse to remove within six months after the ratification of the treaty, he forfeits the protection of the United States, and the Indians were at liberty to punish him as they might think proper.

6. The Indians are bound to deliver up to the United States any Indian who shall commit robbery, or other capital crime, on a white person living within their protection.

7. If the same offence be committed on an Indian by a citizen of the United States, he is to be punished.

8. It is understood that the punishment of the innocent, under the idea of retaliation, is unjust, and shall not be practised on either side, except where there is a manifest violation of this treaty; and then it shall be preceded, first, by a demand of justice; and, if refused, then by a declaration of hostilities.

"That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have a right to send a deputy of their choice, whenever they think fit, to Congress."

The treaty of Holston was entered into with the same people, on the 2d day of July, 1791.

This was a treaty of peace, in which the Cherokees again placed themselves under the protection of the United States, and engaged to hold no treaty with any foreign power, individual State, or with individuals of any State. Prisoners were agreed to be delivered up on both sides; a new Indian boundary was fixed; and a cession of land made to the United States on the payment of a stipulated consideration.

A free, unmolested road was agreed to be given through the Indian lands, and the free navigation of the Tennessee river. It was agreed that the United States should have the exclusive right of regulating their trade, and a solemn guarantee of their land, not ceded, was made. A similar provision was made as to the punishment of offenders, and as to all persons who might enter the Indian territory, as was contained in the treaty of Hopewell. Also that reprisal or retaliation shall not be committed, until satisfaction shall have been demanded of the aggressor.

On the 7th day of August, 1786, an ordinance for the regulation of Indian affairs was adopted, which repealed the former system.

In 1794, another treaty was made with the Cherokees, the object of which was to carry into effect the treaty of Holston. And on the plains

of Tellico, on the 2d day of October, 1798, the Cherokees, in another treaty, agreed to give a right of way, in a certain direction, over their lands. Other engagements were also entered into, which need not be referred to.

Various other treaties were made by the United States with the Cherokee Indians, by which, among other arrangements, cessions of territory were procured and boundaries agreed on.

In a treaty made in 1817, a distinct wish is expressed by the Cherokees to assume a more regular form of government, in which they are encouraged by the United States. By a treaty held at Washington, on the 27th day of February, 1819, a reservation of land is made by the Cherokees for a school fund, which was to be surveyed and sold by the United States for that purpose. And it was agreed that all white persons who had intruded on the Indian lands should be removed.

To give effect to various treaties with this people, the power of the Executive has frequently been exercised; and at one time General Washington expressed a firm determination to resort to military force to remove intruders from the Indian territories.

On the 30th of March, 1802, Congress passed an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

In this act it is provided, that any citizen or resident in the United States who shall enter into the Indian lands to hunt, or for any other purpose, without a license, shall be subject to a fine and imprisonment. And if any person shall attempt to survey, or actually survey, the Indian lands, he shall be liable to forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months. No person is permitted to reside as a trader within the Indian boundaries, without a license or permit. All persons are prohibited, under a heavy penalty, from purchasing the Indian lands; and all such purchases are declared to be void. And it is made lawful for the military force of the United States to arrest offenders against the provisions of the act.

By the seventeenth section, it is provided that the act shall not be so construed as to "prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual States; or the unmolested use of a road from Washington district to Mero district, or to prevent the citizens of Tennessee from keeping in repair said road." Nor was the act to be so construed as to prevent persons from travelling from Knoxville to Price's settlement, provided they shall travel in the tract or path which is usually travelled, and the Indians do not object; but if they object, then all travel on this road to be prohibited, after proclamation by the President, under the penalties provided in the act.

Several acts, having the same object in view, were passed prior to this one; but as they were repealed either before or by the act of 1802, their provisions need not be specially noticed.

The acts of the State of Georgia which the plaintiff in error complains of, as being repugnant to the constitution, treaties, and laws of the United States, are found in two statutes.

The first act was passed the 12th of December, 1829; and is entitled "An act to add the territory lying within the chartered limits of Georgia, and now in the occupancy of the Cherokee Indians, to the counties of

Carroll, Dekalb, Gwinnett, and Habersham; and to extend the laws of the State over the same, and to annul all laws made by the Cherokee nation of Indians, and to provide for the compensation of officers serving legal process in said territory, and to regulate the testimony of Indians, and to repeal the ninth section of the act of 1828 on this subject.

This act annexes the territory of the Indians, within the limits of Georgia, to the counties named in the title; and extends the jurisdiction of the State over it. It annuls the laws, ordinances, orders, and regulations, of any kind, made by the Cherokees, either in council or in any other way, and they are not permitted to be given in evidence in the courts of the State. By this law, no Indian, or the descendant of an Indian, residing within the Creek or Cherokee nation of Indians, shall be deemed a competent witness in any court of the State, to which a white person may be a party, except such white person reside within the nation. Offences under the act are to be punished by confinement in the penitentiary, in some cases not less than four nor more than six years, and in others not exceeding four years.

The second act was passed on the 22d day of December, 1830, and is entitled "An act to prevent the exercise of assumed and arbitrary power, by all persons, on pretext of authority from the Cherokee Indians and their laws; and to prevent white persons from residing within that part of the chartered limits of Georgia occupied by the Cherokee Indians; and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory."

By the first section of this act, it is made a penitentiary offence, after the first day of February, 1831, for any person or persons, under color or pretence of authority from the said Cherokee tribe, or as headmen, chiefs, or warriors of said tribe, to cause or procure, by any means, the assembling of any council or other pretended legislative body of the said Indians, for the purpose of legislating, &c.

They are prohibited from making laws, holding courts of justice, or executing process. And all white persons, after the 1st of March, 1831, who shall reside within the limits of the Cherokee nation without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, or who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor; and, upon conviction thereof, shall be punished by confinement to the penitentiary, at hard labor, for a term not less than four years. From this punishment agents of the United States are excepted, white females, and male children under twenty-one years of age.

Persons who have obtained license are required to take the following oath: "I, A. B., do solemnly swear that I will support and defend the constitution and laws of the State of Georgia, and uprightly demean myself as a citizen thereof. So help me God!"

The governor is authorized to organize a guard, which shall not consist of more than sixty persons, to protect the mines in the Indian territory, and the guard is authorized to arrest all offenders under the act.

It is apparent that these laws are repugnant to the treaties with the Cherokee Indians which have been referred to, and to the law of 1802. This repugnance is made so clear by an exhibition of the respective acts, that no force of demonstration can make it more palpable.

By the treaties and laws of the United States, rights are guarantied to the Cherokees, both as it respects their territory and internal polity. By the laws of Georgia these rights are abolished; and not only abolished, but an ignominious punishment is inflicted on the Indians and others, for the exercise of them. The important question then arises, which shall stand, the laws of the United States, or the laws of Georgia? No rule of construction, or subtlety of argument, can evade an answer to this question. The response must be, so far as the punishment of the plaintiff in error is concerned, in favor of the one or the other.

Not to feel the full weight of this momentous subject, would evidence an ignorance of that high responsibility which is devolved upon this tribunal, and upon its humblest member, in giving a decision in this case.

Are the treaties and law which have been cited, in force? and what, if any, obligations do they impose on the federal government within the limits of Georgia?

A reference has been made to the policy of the United States on the subject of Indian affairs before the adoption of the constitution, with the view of ascertaining in what light the Indians have been considered by the first official acts, in relation to them, by the United States. For this object, it might not be improper to notice how they were considered by the European inhabitants who first formed settlements in this part of the continent of America.

The abstract right of every section of the human race to a reasonable portion of the soil, by which to acquire the means of subsistence, cannot be controverted. And it is equally clear that the range of nations or tribes, who exist in the hunter state, may be restricted within reasonable limits. They shall not be permitted to roam, in the pursuit of game, over an extensive and rich country, whilst in other parts human beings are crowded so closely together as to render the means of subsistence precarious. The law of nature, which is paramount to all other laws, gives the right to every nation to the enjoyment of a reasonable extent of country, so as to derive the means of subsistence from the soil.

In this view, perhaps, our ancestors, when they first migrated to this country, might have taken possession of a limited extent of the domain, had they been sufficiently powerful, without negotiation or purchase from the native Indians. But this course is believed to have been nowhere taken. A more conciliatory mode was preferred, and one which was better calculated to impress the Indians, who were then powerful, with a sense of the justice of their white neighbors. The occupancy of their lands was never assumed except upon the basis of contract, and on the payment of a valuable consideration.

This policy has been obtained from the earliest white settlements in this country, down to the present time. Some cessions of territory may have been made by the Indians, in compliance with the terms on which peace was offered by the whites; but the soil thus taken was taken by the laws of conquest, and always as an indemnity for the expenses of the war, commenced by the Indians.

At no time has the sovereignty of the country been recognised as existing in the Indians, but they have been always admitted to possess many of the attributes of sovereignty. All the rights which belong to self government have been recognised as vested in them. Their right of occupancy has never been questioned, but the fee in the soil has been con-

sidered in the government. This may be called the right to the ultimate domain, but the Indians have a present right of possession.

In some of the old States—Massachusetts, Connecticut, Rhode Island and others—where small remnants of tribes remain, surrounded by white population, and who by their reduced numbers had lost the power of self government, the laws of the State have been extended over them, for the protection of their persons and property.

Before the adoption of the constitution, the mode of treating with the Indians was various. After the formation of the confederacy, this subject was placed under the special superintendence of the United Colonies; though, subsequent to that time, treaties may have been occasionally entered into between a State and the Indians in its neighborhood. It is not considered to be at all important to go into a minute inquiry on this subject.

By the constitution, the regulation of commerce among the Indian tribes is given to Congress. This power must be considered as exclusively vested in Congress, as the power to regulate commerce with foreign nations, to coin money, to establish post offices, and to declare war. It is enumerated in the same section, and belongs to the same class of powers.

This investiture of power has been exercised in the regulation of commerce with the Indians, sometimes by treaty, and at other times by enactments of Congress. In this respect they have been placed by the federal authority, with but few exceptions, on the same footing as foreign nations.

It is said that these treaties are nothing more than compacts, which cannot be considered as obligatory on the United States, from a want of power in the Indians to enter into them.

What is a treaty? The answer is, it is a compact formed between two nations, or communities, having the right of self-government.

Is it essential that each party shall possess the same attributes of sovereignty, to give force to the treaty? This will not be pretended; for, on this ground, very few valid treaties could be formed. The only requisite is that each of the contracting parties shall possess the right of self-government, and the power to perform the stipulations of the treaty.

Under the constitution, no State can enter into any treaty; and it is believed that, since its adoption, no State, under its own authority, has held a treaty with the Indians.

It must be admitted that the Indians sustain a peculiar relation to the United States. They do not constitute, as was decided at the last term, a foreign State, so as to claim the right to sue in the Supreme Court of the United States; and yet, having the right of self-government, they, in some sense, form a State. In the management of their internal concerns, they are dependent on no power. They punish offences under their own laws; and, in doing so, they are responsible to no earthly tribunal. They make war, and form treaties of peace. The exercise of these and other powers, gives to them a distinct character as a people, and constitutes them, in some respects, a State, although they may not be admitted to possess the right of soil.

By various treaties, the Cherokees have placed themselves under the protection of the United States; they have agreed to trade with no other people, nor to invoke the protection of any other sovereignty. But such

engagements do not divest them of the right of self government, nor destroy their capacity to enter into treaties or compacts.

Every State is more or less dependent on those which surround it; but, unless this dependence shall extend so far as to merge the political existence of the protected people into that of their protectors, they may still constitute a State. They may exercise the powers not relinquished, and bind themselves as a distinct and separate community.

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.

The question may be asked, is no distinction to be made between a civilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe, with whom we have made treaties?

The inquiry is not, what station shall now be given to the Indian tribes in our country? but, what relation have they sustained to us, since the commencement of our government?

We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted the power of this people to bind themselves, and to impose obligations on us?

The President and Senate, except under the treaty making power, cannot enter into compacts with the Indians, or with foreign nations. This power has been uniformly exercised in forming treaties with the Indians.

Nations differ from each other in condition, and that of the same nation may change by the revolutions of time, but the principles of justice are the same. They rest upon a base which will remain beyond the endurance of time.

After a lapse of more than forty years since treaties with the Indians have been solemnly ratified by the general government, it is too late to deny their binding force. Have the numerous treaties which have been formed with them, and the ratifications by the President and Senate, been nothing more than an idle pageantry?

By numerous treaties with the Indian tribes, we have acquired accessions of territory, of incalculable value to the Union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognised in them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties; but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors.

In the executive, legislative, and judicial branches of our government, we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights

which constitute them a State, or separate community—not a foreign, but a domestic community—not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation.

But, can the treaties which have been referred to, and the law of 1802, be considered in force within the limits of the State of Georgia?

In the act of cession made by Georgia to the United States, in 1802, of all lands claimed by her west of the line designated, one of the conditions was “that the United States should, at their own expense, extinguish, for the use of Georgia, as early as the same can be peaceably obtained, on reasonable terms, the Indian title to lands within the State of Georgia.”

One of the counsel, in the argument, endeavored to show that no part of the country now inhabited by the Cherokee Indians is within what is called the chartered limits of Georgia.

It appears that the charter of Georgia was surrendered by the trustees, and that, like the State of South Carolina, she became a regal colony. The effect of this change was, to authorize the Crown to alter the boundaries, in the exercise of its discretion. Certain alterations, it seems, were subsequently made; but I do not conceive it can be of any importance to enter into a minute consideration of them. Under its charter, it may be observed that Georgia derived a right to the soil, subject to the Indian title, by occupancy. By the act of cession, Georgia designated a certain line as the limit of that cession, and this line, unless subsequently altered, with the assent of the parties interested, must be considered as the boundary of the State of Georgia. This line having been thus recognised, cannot be contested on any question which may incidentally arise for judicial decision.

It is important, on this part of the case, to ascertain in what light Georgia has considered the Indian title to lands, generally and particularly, within her own boundaries; and also, as to the right of Indian self-government.

In the first place, she was a party to all the treaties entered into between the United States and the Indians, since the adoption of the constitution. And prior to that period, she was represented in making them, and was bound by their provisions, although it is alleged that she remonstrated against the treaty of Hopewell. In the passage of the intercourse law of 1802, as one of the constituent parts of the Union, she was also a party.

The stipulation made in her act of cession, that the United States should extinguish the Indian title to lands within the State, was a distinct recognition of the right in the federal government to make the extinguishment; and also, that until it should be made, the right of occupancy would remain in the Indians.

In a law of the State of Georgia, “for opening the land office and for other purposes,” passed in 1783, it is declared that surveys made on Indian lands were null and void; a fine was inflicted on the person making the survey, which if not paid by the offender, he was punished by imprisonment. By a subsequent act, a line was fixed for the Indians, which was a boundary between them and the whites. A similar provision is found in other laws of Georgia, passed before the adoption of the constitution. By an act of 1787, severe corporeal punishment was inflicted on those who made or attempted to make surveys, “beyond the temporary line designating the Indian hunting ground.”

On the 19th of November, 1814, the following resolutions were adopted by the Georgia legislature:

"Whereas many of the citizens of this State, without regard to existing treaties between the friendly Indians and the United States, and contrary to the interest and good policy of this State, have gone, and are frequently going over, and settling and cultivating the lands allotted to the friendly Indians for their hunting-ground, by which means the State is not only deprived of their services in the army, but considerable feuds are engendered between us and our friendly neighboring Indians:

"Resolved, therefore, by the Senate and House of Representatives of the State of Georgia in General Assembly met, that his excellency the governor be, and is hereby, requested to take the necessary means to have all intruders removed off the Indian lands, and that proper steps be taken to prevent future aggressions."

In 1817 the legislature refused to take any steps to dispose of lands acquired by treaty with the Indians, until the treaty had been ratified by the Senate; and, by a resolution, the governor was directed to have the line run between the State of Georgia and the Indians, according to the late treaty. The same thing was again done in the year 1819, under a recent treaty.

In a memorial to the President of the United States, by the legislature of Georgia, in 1819, they say: "it has long been the desire of Georgia that her settlements should be extended to her ultimate limits;" "that the soil within her boundaries should be subjected to her control, and that her police organization and government should be fixed and permanent;" "that the State of Georgia claims a right to the jurisdiction and soil of the territory within her limits." "She admits, however, that the right is inchoate—remaining to be perfected by the United States, in the extinction of the Indian title; the United States *pro hac vice* as their agents."

The Indian title was also distinctly acknowledged by the act of 1796, repealing the Yazoo act. It is there declared, in reference to certain lands, that "they are the sole property of the State, subject only to the right of the treaty of the United States, to enable the State to purchase, under its pre-emption right, the Indian title to the same;" and also, that the land is vested in the "State, to whom the right of pre-emption to the same belongs, subject only to the controlling power of the United States, to authorize any treaties for, and to superintend the same." This language, it will be observed, was used long before the act of cession.

On the 25th of March, 1825, the governor of Georgia issued the following proclamation:

"Whereas it is provided in said treaty, that the United States shall protect the Indians against the encroachments, hostilities, and impositions of the whites, so that they suffer no imposition, molestation, or injury in their persons, goods, effects, their dwellings, or the lands they occupy, until their removal shall have been accomplished, according to the terms of the treaty," which had been recently made with the Indians:

"I have therefore thought proper to issue this my proclamation, warning all persons, citizens of Georgia or others, against trespassing or intruding upon lands occupied by the Indians, within the limits of Georgia, either for the purpose of settlement or otherwise, as every such act will be in direct violation of the provisions of the treaty aforesaid, and will

expose the aggressors to the most certain and summary punishment by the authorities of the State and the United States." "All good citizens, therefore, pursuing the dictates of good faith, will unite in enforcing the obligations of the treaty, *as the supreme law*," &c.

Many other references might be made to the public acts of the State of Georgia, to show that she admitted the obligation of Indian treaties, but the above are believed to be sufficient. These acts do honor to the character of that highly respectable State.

Under the act of cession, the United States were bound, in good faith, to extinguish the Indian title to lands within the limits of Georgia, as soon as it could be done peaceably and on reasonable terms.

The State of Georgia has repeatedly remonstrated to the President on this subject, and called upon the government to take the necessary steps to fulfil its engagement. She complains that whilst the Indian title to immense tracts of country had been extinguished elsewhere, within the limits of Georgia but little progress had been made; and this was attributed either to a want of effort on the part of the federal government; or to the effect of its policy towards the Indians. In one or more of the treaties, titles in fee simple were given to the Indians to certain reservations of land; and this was complained of by Georgia, as a direct infraction of the condition of the cession. It has also been asserted that the policy of the government, in advancing the cause of civilization among the Cherokees, and inducing them to assume the forms of a regular government and of civilized life, was calculated to increase their attachment to the soil they inhabit, and to render the purchase of their title more difficult, if not impracticable.

A full investigation of this subject may not be considered as strictly within the scope of the judicial inquiry which belongs to the present case. But, to some extent, it has a direct bearing on the question before the court, as it tends to show how the rights and powers of Georgia were construed by her public functionaries.

By the first President of the United States, and by every succeeding one, a strong solicitude has been expressed for the civilization of the Indians. Through the agency of the government, they have been partially induced, in some parts of the Union, to change the hunter state for that of the agriculturist and herdsman.

In a letter addressed by Mr. Jefferson to the Cherokees, dated the 9th of January, 1809, he recommends them to adopt a regular government, that crimes might be punished and property protected. He points out the mode by which a council should be chosen, who should have power to enact laws; and he also recommended the appointment of judicial and executive agents, through whom the law might be enforced. The agent of the government, who resided among them, was recommended to be associated with their council, that he might give the necessary advice on all subjects relating to their government.

In the treaty of 1817, the Cherokees are encouraged to adopt a regular form of government.

Since that time, a law has been passed making an annual appropriation of the sum of ten thousand dollars, as a school fund, for the education of Indian youths, which has been distributed among the different tribes where schools had been established. Missionary labors among the Indians have also been sanctioned by the government, by granting permits,

to those who were disposed to engage in such a work, to reside in the Indian country.

That the means adopted by the general government to reclaim the savage from his erratic life, and induce him to assume the forms of civilization, have had a tendency to increase the attachment of the Cherokees to the country they now inhabit, is extremely probable; and that it increased the difficulty of purchasing their lands, as by act of cession the general government agreed to do, is equally probable.

Neither Georgia, nor the United States, when the cession was made, contemplated that force should be used in the extinguishment of the Indian title; nor that it should be procured on terms that are not reasonable. But, may it not be said, with equal truth, that it was not contemplated by either party that any obstructions to the fulfilment of the compact should be allowed, much less sanctioned, by the United States?

The humane policy of the government towards these children of the wilderness must afford pleasure to every benevolent feeling; and if the efforts made have not proved as successful as was anticipated, still much has been done. Whether the advantages of this policy should not have been held out by the government to the Cherokees within the limits of Georgia, as an inducement for them to change their residence and fix it elsewhere, rather than by such means to increase their attachment to their present home, as has been insisted on, is a question which may be considered by another branch of the government. Such a course might, perhaps, have secured to the Cherokee Indians all the advantages they have realized from the paternal superintendence of the government; and have enabled it, on peaceable and reasonable terms, to comply with the act of cession.

Does the intercourse law of 1802 apply to the Indians who live within the limits of Georgia? The nineteenth section of that act provides, "that it shall not be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual States." This provision, it has been supposed, excepts from the operation of the law the Indian lands which lie within any State. A moment's reflection will show that this construction is most clearly erroneous.

To constitute an exception to the provisions of this act, the Indian settlement, at the time of its passage, must have been surrounded by settlements of the citizens of the United States, and within the ordinary jurisdiction of a State; not only within the limits of a State, but within the common exercise of its jurisdiction.

No one will pretend that this was the situation of the Cherokees who lived within the State of Georgia in 1802; or, indeed, that such is their present situation. If, then, they are not embraced by the exception, all the provisions of the act of 1802 apply to them.

In the very section which contains the exception, it is provided that the use of the road from Washington district to Mero district should be enjoyed, and that the citizens of Tennessee, under the orders of the governor, might keep the road in repair. And in the same section the navigation of the Tennessee river is reserved, and a right to travel from Knoxville to Price's settlement, provided the Indians should not object.

Now, all these provisions relate to the Cherokee country; and can it be

supposed, by any one, that such provisions would have been made in the act, if Congress had not considered it as applying to the Cherokee country, whether in the State of Georgia or in the State of Tennessee?

The exception applied, exclusively, to those fragments of tribes which are found in several of the States, and which came literally within the description used.

Much has been said against the existence of an independent power within a sovereign State; and the conclusion has been drawn, that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a State. The refutation of this argument is found in our past history.

That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a State, have been taken under the protection of the laws, has already been admitted. But there has been no instance where the State laws have been generally extended over a numerous tribe of Indians, living within the State, and exercising the right of self-government, until recently.

Has Georgia ever, before her late laws, attempted to regulate the Indian communities within her limits? It is true, New York extended her criminal laws over the remains of the tribes within that State, more for their protection than for any other purpose. These tribes were few in number, and were surrounded by a white population. But, even the State of New York has never asserted the power, it is believed, to regulate their concerns beyond the suppression of crime.

Might not the same objection to this interior independent power, by Georgia, have been urged with as much force as at present, ever since the adoption of the constitution? Her chartered limits, to the extent claimed, embraced a great number of different nations of Indians, all of whom were governed by their own laws, and were amenable only to them. Has not this been the condition of the Indians within Tennessee, Ohio, and other States?

The exercise of this independent power surely does not become more objectionable, as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit, that so long as the Indians govern by the rifle and tomahawk, their government may be tolerated; but, that it must be suppressed so soon as it shall be administered upon the enlightened principles of reason and justice?

Are not those nations of Indians who have made some advances in civilization, better neighbors than those who are still in a savage state? And is not the principle, as to their self-government within the jurisdiction of a State, the same?

When Georgia sanctioned the constitution, and conferred on the national legislature the exclusive right to regulate commerce or intercourse with the Indians, did she reserve the right to regulate intercourse with the Indians within her limits? This will not be pretended. If such had been the construction of her own powers, would they not have been exercised? Did her senators object to the numerous treaties which have been formed with the different tribes, who lived within her acknowledged boundaries? Why did she apply to the Executive of the Union, repeatedly, to have the Indian title extinguished, to establish a line between the Indians and the State, and to procure a right of way through the Indian lands?

The residence of Indians, governed by their own laws, within the limits of a State, has never been deemed incompatible with State sovereignty, until recently. And yet this has been the condition of many distinct tribes of Indians, since the foundation of the federal government.

How is the question varied by the residence of the Indians in a territory of the United States? Are not the United States sovereign within their territories? And has it ever been conceived, by any one, that the Indian governments which exist in the territories are incompatible with the sovereignty of the Union?

A State claims the right of sovereignty commensurate with her territory, as the United States claim it, in their proper sphere, to the extent of the federal limits. This right or power in some cases may be exercised, but not in others. Should a hostile force invade the country, at its most remote boundary, it would become the duty of the general government to expel the invaders. But it would violate the solemn compacts with the Indians, without cause, to dispossess them of rights which they possess by nature, and have been uniformly acknowledged by the federal government.

Is it incompatible with State sovereignty to grant exclusive jurisdiction to the federal government over a number of acres of land for military purposes? Our forts and arsenals, though situated in the different States, are not within their jurisdiction.

Does not the constitution give to the United States as exclusive jurisdiction in regulating intercourse with the Indians, as has been given to them over any other subjects? Is there any doubt as to this investiture of power? Has it not been exercised by the federal government ever since its formation, not only without objection, but under the express sanction of all the States?

The power to dispose of the public domain is an attribute of sovereignty. Can the new States dispose of the lands within their limits which are owned by the federal government? The power to tax is also an attribute of sovereignty; but, can the new States tax the lands of the United States? Have they not bound themselves, by compact, not to tax the public lands, nor until five years after they shall have been sold? May they violate this compact at discretion?

Why may not these powers be exercised by the respective States? The answer is, because they have parted with them, expressly for the general good. Why may not a State coin money, issue bills of credit, enter into a treaty of alliance or confederation, or regulate commerce with foreign nations? Because these powers have been expressly and exclusively given to the federal government.

Has not the power been as expressly conferred on the federal government to regulate intercourse with the Indians; and is it not as exclusively given as any of the powers above enumerated? There being no exception to the exercise of this power, it must operate on all communities of Indians, exercising the right of self government; and consequently include those who reside within the limits of a State, as well as others. Such has been the uniform construction of this power by the federal government, and of every State government, until the question was raised by the State of Georgia.

Under this clause of the constitution, no political jurisdiction over the Indians has been claimed or exercised. The restrictions imposed by the

law of 1802 come strictly within the power to regulate trade; not as an incident, but as a part of the principal power. It is the same power, and is conferred in the same words, that has often been exercised in regulating trade with foreign countries. Embargoes have been imposed, laws of non-intercourse have been passed, and numerous acts, restrictive of trade, under the power to regulate commerce with foreign nations.

In the regulation of commerce with the Indians, Congress have exercised a more limited power than has been exercised in reference to foreign countries. The law acts upon our own citizens, and not upon the Indians, the same as the laws referred to act upon our own citizens in their foreign commercial intercourse.

It will scarcely be doubted by any one, that, so far as the Indians, as distinct communities, have formed a connexion with the federal government, by treaties, that such connexion is political, and is equally binding on both parties. This cannot be questioned, except upon the ground that, in making these treaties, the federal government has transcended the treaty-making power. Such an objection, it is true, has been stated, but it is one of modern invention, which arises out of local circumstances, and is not only opposed to the uniform practice of the government, but also to the letter and spirit of the constitution.

But the inquiry may be made, is there no end to the exercise of this power over Indians within the limits of a State, by the general government? The answer is, that, in its nature, it must be limited by circumstances.

If a tribe of Indians shall become so degraded or reduced in numbers as to lose the power of self-government, the protection of the local law, of necessity, must be extended over them. The point at which this exercise of power by a State would be proper, need not now be considered, if indeed it be a judicial question. Such a question does not seem to arise in this case. So long as treaties and laws remain in full force, and apply to Indian nations, exercising the right of self-government within the limits of a State, the judicial power can exercise no discretion in refusing to give effect to those laws when questions arise under them, unless they shall be deemed unconstitutional.

The exercise of the power of self-government by the Indians, within a State, is undoubtedly contemplated to be temporary. This is shown by the settled policy of the government, in the extinguishment of their title, and especially by the compact with the State of Georgia. It is a question, not of abstract right, but of public policy. I do not mean to say that the same moral rule which should regulate the affairs of private life, should not be regarded by communities or nations. But, a sound national policy does require that the Indian tribes within our States should exchange their territories, upon equitable principles, or eventually consent to become amalgamated in our political communities.

At best they can enjoy a very limited independence within the boundaries of a State, and such a residence must always subject them to encroachments from the settlements around them; and their existence within a State, as a separate and independent community, may seriously embarrass or obstruct the operation of the State laws. It, therefore, it would be inconsistent with the political welfare of the States, and the social advance of their citizens, that an independent and permanent power should exist within their limits, this power must give way to the greater

power which surrounds it, or seek its exercise beyond the sphere of State authority.

This state of things can only be produced by a co-operation of the State and federal governments. The latter has the exclusive regulation of intercourse with the Indians; and, so long as this power shall be exercised, it cannot be obstructed by the State. It is a power given by the constitution, and sanctioned by the most solemn acts of both the federal and State governments; consequently, it cannot be abrogated at the will of a State. It is one of the powers parted with by the States, and vested in the federal government. But, if a contingency shall occur, which shall render the Indians who reside in a State incapable of self-government, either by moral degradation or a reduction of their numbers, it would undoubtedly be in the power of a State government to extend to them the ægis of its laws. Under such circumstances, the agency of the general government, of necessity, must cease.

But, if it shall be the policy of the government to withdraw its protection from the Indians who reside within the limits of the respective States, and who not only claim the right of self government, but have uniformly expressed it, the laws and treaties which impose duties and obligations on the general government should be abrogated by the powers competent to do so. So long as those laws and treaties exist, having been formed within the sphere of the federal powers, they must be respected and enforced by the appropriate organs of the federal government.

The plaintiff who prosecutes this writ of error, entered the Cherokee country, as it appears, with the express permission of the President, and under the protection of the treaties of the United States, and the law of 1802. He entered, not to corrupt the morals of this people, not to profit by their substance, but to teach them, by precept and example, the Christian religion. If he be unworthy of this sacred office; if he had any other object than the one professed; if he sought, by his influence, to counteract the humane policy of the federal government towards the Indians, and to embarrass its efforts to comply with its solemn engagement with Georgia, though his sufferings be illegal, he is not a proper object of public sympathy.

It has been shown that the treaties and laws referred to come within the due exercise of the constitutional powers of the federal government; that they remain in full force, and consequently must be considered as the supreme laws of the land. These laws throw a shield over the Cherokee Indians. They guarantied to them their rights of occupancy, of self-government, and the full enjoyment of those blessings which might be attained in their humble condition. But, by the enactments of the State of Georgia, this shield is broken in pieces—the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them, for the exercise of those rights which have been most solemnly guarantied to them by the national faith.

Of these enactments, however, the plaintiff in error has no right to complain, nor can he question their validity, except in so far as they affect his interests. In this view, and in this view only, has it become necessary, in the present case, to consider the repugnancy of the laws of Georgia to those of the Union.

Of the justice or policy of these laws, it is not my province to speak; such considerations belonging to the legislature by whom they were

passed. They have, no doubt, been enacted under a conviction of right, by a sovereign and independent State, and their policy may have been recommended by a sense of wrong under the compact. Thirty years have elapsed since the federal government engaged to extinguish the Indian title within the limits of Georgia. That she has strong ground of complaint arising from this delay, must be admitted; but such considerations are not involved in the present case—they belong to another branch of the government. We can look only to the law, which defines our power, and marks out the path of our duty.

Under the administration of the laws of Georgia, a citizen of the United States has been deprived of his liberty; and, claiming protection under the treaties and laws of the United States, he makes the question, as he has a right to make it, whether the laws of Georgia, under which he is now suffering an ignominious punishment, are not repugnant to the constitution of the United States, and the treaties and laws made under it. This repugnancy has been shown; and it remains only to say, what has before been often said by this tribunal of the local laws of many of the States in this Union, that being repugnant to the constitution of the United States, and to the laws made under it, they can have no force to divest the plaintiff in error of his property or liberty.

Mr. Justice *Baldwin* dissented: stating that, in his opinion, the record was not properly returned upon the writ of error, and ought to have been returned by the State court, and not by the clerk of the court. As to the merits, he said his opinion remained the same as was expressed by him in the case of the Cherokee Nation v. the State of Georgia, at the last term.

The opinion of Mr. Justice *Baldwin* was not delivered to the reporter.

This cause came on to be heard on the transcript of the record from the superior court for the county of Gwinnett, in the State of Georgia, and was argued by counsel; on consideration whereof, it is the opinion of this court, that the act of the legislature of the State of Georgia, upon which the indictment in this case is founded, is contrary to the constitution, treaties, and laws of the United States; and that the special plea in bar pleaded by the said Samuel A. Worcester, in manner aforesaid, and relying upon the constitution, treaties, and laws of the United States aforesaid, is a good bar and defence to the said indictment, by the said Samuel A. Worcester, and as such ought to have been allowed and admitted by the said superior court for the county of Gwinnett, in the State of Georgia, before which the said indictment was pending and tried; and that there was error in the said superior court of the State of Georgia, in overruling the plea so pleaded as aforesaid. It is therefore ordered and adjudged, that the judgment rendered in the premises, by the said superior court of Georgia, upon the verdict upon the plea of not guilty afterwards pleaded by the said Samuel A. Worcester, whereby the said Samuel A. Worcester is sentenced to hard labor in the penitentiary of the State of Georgia, ought to be reversed and annulled. And this court proceeding to render such judgment as the said superior court, of the State of Georgia, should have rendered, it is further ordered and adjudged that the said judgment of the said superior court be, and hereby is, reversed and annulled; and that the judgment be, and hereby is, awarded, that the special plea in bar, so as aforesaid pleaded, is a good and sufficient plea in bar, in law, to the indictment aforesaid; and that all proceedings on the

said indictment do forever surcease; and that the said Samuel A. Worcester be, and hereby is, henceforth dismissed therefrom, and that he go thereof quit without day; and that a special mandate do go from this court, to the said superior court, to carry this judgment into execution.

No. 4.

Message from the President of the United States, transmitting the information required by a resolution of the House of Representatives, of the 1st of July last, in relation to the hostilities then existing with the Creek Indians, &c. &c.

To the House of Representatives:

I transmit, herewith, a copy of the instructions, prepared under my direction, by the War Department, for the commissioners appointed by me, in pursuance of the request contained in the resolution adopted by the House of Representatives, on the 1st of July last, to investigate the cause of the hostilities then existing with the Creek Indians; and, also, copies of the reports on that subject received from the commissioners.

ANDREW JACKSON.

WASHINGTON CITY, February 14, 1837.

WAR DEPARTMENT,

February 11, 1837.

SIR: I have the honor to lay before you, for transmission to the House of Representatives, copies of the reports of the Hon. Thomas H. Crawford and Alfred Balch, esq., who were appointed commissioners to investigate the causes of the late hostilities of the Creek Indians, under a resolution of that body, passed on the 1st of July, 1836.

No report has yet been received from these gentlemen in relation to the frauds committed on these Indians in the sale of their reservations, an inquiry into which was requested in the same resolution. They are, however, prosecuting this branch of the subject with great vigor, and it is believed they will succeed in effecting the objects contemplated.

I also lay before you a copy of the instructions given to Messrs. Crawford and Balch, when they were appointed.

Very respectfully, your most obedient servant,

B. F. BUTLER,

Secretary of War ad interim.

To the PRESIDENT.

WAR DEPARTMENT,

July 12, 1836.

GENTLEMEN: I have the honor to enclose, herewith, the copy of a memorial addressed to the Congress of the United States, and of a resolution of the House of Representatives, referring this memorial to the President

for his action. I enclose, likewise, a brief memoir, giving a summary of the transactions arising out of the Creek treaty of 1832, so far as these are disclosed by the official documents in this department. To these are added copies of all the papers in relation to this whole subject, which can serve to throw light upon it, or which appear to be necessary to guide you in the investigations committed to you.

The President has selected you to conduct this inquiry. You will be allowed for your services eight dollars a day for every day actually engaged in the business, and eight dollars for every twenty miles of necessary travel.

Your duties will divide themselves into two distinct branches:

1. The investigations into the causes of hostilities, and into any other transactions connected with the contracts for the sale of Creek lands, which may lead to prosecutions before the tribunals of justice for criminal offences; and

2. The inquiries necessary to do justice to the Indians, and to the parties claiming to have purchased their lands.

With respect to the first, it would be difficult (nor, indeed, is it necessary) to give you any detailed instructions. It is particularly important to learn the causes of the present hostilities of the Indians, and to determine how far, and in what manner, they have been connected with these land transactions; and, especially, to ascertain what steps have been taken by any white persons to excite the Indians to war. You will proceed to the country which has been the theatre of these operations, and you will there seek all the information within your reach which can enable you to arrive at satisfactory conclusions. Wherever you have just cause to believe that any persons have committed any breaches of the United States laws, either in relation to the commencement or prosecution of the hostilities with the Indians, or to the procuring of contracts, you will cause the necessary prosecutions to be instituted against such persons in the proper courts of the United States. As your duties will be extrajudicial, you will, of course, not have the power of calling witnesses before you. But you will be in the midst of the community which has been deeply affected by these transactions, and which must be able and willing to furnish you with information which cannot but lead to practical conclusions. Whenever you have reason to believe that a person possesses knowledge of facts which may be useful in the investigation, you will request him to appear before you; and, if he should so appear, you will request him to be sworn, and his affidavit to be reduced to writing. Keep a journal of all your proceedings, and enter upon it any statements which may be made to you.

With respect to the second branch of the inquiry, (the examination of these Indian contracts, with a view to confirm or set them aside,) the enclosed documents will give you full information. The President commits the whole matter to your discretion. You are at liberty to pursue such a course in relation to it as you may think proper. The great object is to do justice to the respective parties; to set aside the fraudulent contracts, and to confirm the honest ones. The instructions heretofore given, copies of which you will find herewith, will make known to you the views of the President, both with respect to the end to be attained, and the means to be adopted. So far as relates to your mode of proceeding, where the rights of parties are involved, I recommend to you to follow the principles laid down in these instructions. With respect to the public notices to be given, the in-

vestigations to be made, the places where they shall be held, and all other matters relating to this business, you will exercise your own discretion. Contracts, which have been approved and certified, cannot be set aside without the action of the President. Such cases must be reported here, with your opinion. All other reservations will be open for conveyance, under your direction. You can appoint certifying agents, who will be allowed the compensation prescribed in the regulations.

The last investigation was interrupted by the Creek war. The gentlemen to whom it was committed seemed to be pursuing a proper course, and, so far as they have definitively reported, their decisions have been confirmed by the President. I am aware it is a matter of some difficulty to determine what course of proceeding you will adopt, more particularly as many of the Indians will have probably left the country before the commencement of your labors. But you are authorized, should you deem it necessary, to appoint one or more persons, with a reasonable compensation, to proceed to the Creek country west of the Mississippi, to procure any information you may require from them. The superintendent (Mr. Armstrong) will be directed to afford you any aid in his power.

It is not at present known how soon the Creek Indians will leave Alabama, nor whether General Jesup, under the instructions which he has received, and *a copy of which* is enclosed, has permitted any conveyance of lands subsequent to the commencement of the present difficulties. He was authorized to do so, as you will perceive, in order that no impediment should exist to the voluntary removal of the friendly portion of the Indians, and with that view to permit them, at the risk of the purchasers, to convey their lands upon a proper consideration. As it was not possible to prepare in time a list of the approved contracts, it necessarily followed that every person making the purchase would do so, depending on the honesty of the Indians, and subject to the risk of a preceding conveyance. These circumstances General Jesup was required publicly to make known. No reports have yet been received on the subject, and consequently it is not known whether anything has been done. As fast as any information is received, it shall be communicated to you; and letters will be directed to you at Columbus, Georgia, where you can have directions sent for forwarding them to you. Should the removal of the Creek Indians have been principally effected before your investigations are undertaken, the practical question, so far as relates to any fraudulent contracts, and to their vacation with a view to put the Indians again in possession of their rights, and as to the mode of proceeding, would be one of some importance, and upon which you must decide, after a full consideration of all the circumstances.

You are authorized to call to your aid the district attorneys of Georgia and of both the districts of Alabama; and those gentlemen will be requested to co-operate with you whenever you may find it necessary to ask for their services. They will also be desired to institute prosecutions against any persons whom you may believe have been guilty of violations of the laws, when the necessary proof can be procured. It is very desirable that the whole matter should be placed before the grand juries of the proper districts, and that all the evidence necessary to their action should be brought before them. I would recommend that you should both attend the proper courts, and aid the district attorneys in this part of their duties. Spare no pains to procure a full disclosure of every fact important to a fair under-

standing of this whole subject, and for the punishment of any persons who have exposed themselves to the penalties of the laws.

You will proceed to the execution of your duties as soon as you can conveniently do so, and pursue your investigations without any unnecessary delay. You will make to this department a full report of your transactions. A secretary will be appointed to aid you in your duties, who will be allowed five dollars a day for his services, and five dollars for every twenty miles travel, who will be paid upon your certificate.

A copy of this letter has been sent to each of you; and, if you accept the appointment, you will please to correspond with each other as to the time and place of your first meeting.

Very, &c.,

LEWIS CASS.

TO THOMAS H. CRAWFORD, Esq., *Chambersburg, Pa.*, and
ALFRED BALCH, Esq., *Nashville, Tennessee.*

EXECUTIVE DEPARTMENT, ALABAMA,
Tuscaloosa, October 27, 1836.

GENTLEMEN: I have had the honor to receive yours of yesterday, in which you refer to the resolution of the House of Representatives of the United States, adopted at the late session of Congress, authorizing the President of the United States to "take such measures as in his judgment might seem expedient, to inquire into certain frauds alleged to have been committed in the sale and purchase of reservations of land to the Creek Indians, *and into the causes of their late hostilities;*" and to your appointment by the President for the purposes indicated by that resolution. Your inquiries are confined to *the causes* of the late hostilities with the Creek Indians, in relation to which you request my opinion.

I must say, in reply, *I have no personal knowledge of facts* on which to found an opinion on the subject to which you allude. I am not aware that I have had any communication, personally or by letter, with any individual who may have been implicated in the excitement of hostilities. So far as I am able to judge from the communications of individuals, or from indications of public sentiment, as expressed at public meetings and otherwise, it seems to me the opinion prevails extensively, if not almost universally, that the frauds and forgeries practised upon the Indians to deprive them of their lands were amongst the principal causes which excited them to hostilities.

Some of those with whom I have conversed have ascribed the war to the combined influence of several causes: to the frauds and forgeries before mentioned; to the vice and intemperance introduced amongst them by a class of white men; and to the destitute and almost starving condition to which they were reduced, mainly by the operation of the two former. With the means of information in my power, I am inclined to believe the latter opinion most correct.

I beg leave to refer you to the copy of a letter from Major General Gilbert Shearer, commanding the 6th division of Alabama militia, bordering upon the Creek country, dated 2d May last, which has some reference to the subject of your communication; and also to the copy of one from Major General William Irwin, commanding the 5th division, bordering upon and

including part of the territory which was occupied by the hostile Indians, dated 4th May last, with which you have already been furnished.

With the highest respect, I am, gentlemen, your most obedient servant,
C. C. CLAY.

Messrs. T. HARTLEY CRAWFORD, and

A. BALCH, *Commissioners, &c.*

EXECUTIVE DEPARTMENT, GEORGIA,
Milledgeville, October 7, 1836.

GENTLEMEN: I have the honor to acknowledge the receipt of your letter of the 3d instant, in which you request me to communicate to you, as commissioners on the part of the United States to inquire into the causes of the recent Creek hostilities, such information as I may have, and which may be communicated consistently with my ideas of propriety and public duty, in regard to the causes of these hostilities, the time when the aspect of things on the Chattahoochee became alarming, the time when the means of meeting reasonable anticipations of danger to the white population of Alabama and Georgia were resorted to by the State and general governments, and what those means were.

Of the causes which led to the Creek war I know nothing, and can, therefore, only give you my opinion, with the reasons on which it is founded.

The great majority of the Creek Indians are idle, dissolute vagrants, many of whom had, for a long time, been subsisting on provisions stolen mostly from the people of Georgia living on and near the Chattahoochee. They were in the daily practice of crossing the river, stealing cattle, horses, hogs, corn, and such other articles as they wanted. If the people thus robbed objected, or attempted to resist or punish them, they would add murder to their other crimes. Many of them were in a state of starvation, and had no means of obtaining subsistence, except by depredations on the property of the white people. In the prosecution of their unlawful purpose they were sometimes detected, and, in the conflict which ensued, some of each party were occasionally killed. A state of bad feeling was the consequence on both sides, and, with the Creeks, ripened into a determination to revenge the death of their guilty comrades. They were, moreover, determined not to emigrate to Arkansas; and believed that, in the moment of panic and consternation produced by their hostilities, they could escape to Florida with the booty they could obtain from the murdered and fleeing inhabitants.

These, in my opinion, were some of the causes which produced the Creek war.

Public opinion has, in some sections of the State, assigned, as a principal cause of hostilities, the frauds which are alleged to have been committed on the Creeks in the purchase of their lands. Of this I know nothing, and have no evidence on which to form an opinion. I cannot, therefore, either affirm or deny the truth of the report.

The predatory incursions of the Creeks into Georgia kept up a constant excitement in the counties on and near the Chattahoochee, which produced repeated calls on the Executive of the State for protection. In the month of January last, arms and ammunition were sent to the counties thus an-

noyed, and in each a corps of twenty men was formed and called into service as spies to watch the movements of the Indians, and give notice of their conduct to the commanding officer of the county, or to chastise and drive them off, if their numbers were not too great.

These companies were kept in service until about the 10th March, when they were superseded by a small battalion of mounted men, consisting of about two hundred, under the command of Major John H. Howard. This force was placed on the Chattahoochee, eighteen miles below Columbus, with instructions to patrol the country; and it had the effect to tranquillize the frontier until early in the month of May, when the Creeks commenced open active hostilities, by murdering the white people and burning their towns and property and carrying away such booty as they could procure.

The first notice I received of this state of things on the frontier was contained in a communication from the honorable John Fontaine, mayor of Columbus, dated on the 9th day of May, and received at the Executive office on the 11th. On the 12th I sent to Columbus one six-pound field-piece and all the small arms remaining in the arsenal, and wrote to the Secretary of War, giving him information of the situation of the people in that quarter, and the general hostility of the Indians. On the 13th I issued an order inviting volunteers to march to the scene of danger, and used all the exertions in my power to bring to the field a competent force, and furnished them with munitions of war.

The troops began to arrive on the frontier the last of May, and the first company was mustered into the service on the 2d or 3d of June, as well as I now recollect. Previous to this, however, the militia of the neighborhood had been called out for temporary protection, and until the army could be assembled. The troops, as fast as they arrived and could be provided with arms, &c., were placed at different points on the river below Columbus, to prevent the escape of the enemy to Florida. The number of Georgia troops that flocked to the standard was between four and five thousand, besides which there was a considerable number of regular troops. But most of the Georgians were without arms, and consequently were not in a condition to go in search of the hostile Indians until about the 18th or 20th June, when the troops received arms and took up the line of march under Generals Scott and Sandford.

I have the honor to be, very respectfully, your obedient servant,
WILLIAM SCHLEY.

Messrs. ALFRED BALCH, and
T. HARTLEY CRAWFORD,
Columbus, Georgia.

Report of A. Balch, commissioner, on the causes of the Creek hostilities.

To the Hon. BENJAMIN F. BUTLER,
Secretary of War:

The undersigned, a commissioner appointed under the following resolution of the House of Representatives of the Congress of the United States, adopted on the 1st day of July, 1836, to wit:

“Resolved, That the President of the United States do cause measures to be taken for investigating certain alleged frauds in the purchase of the

reservations of the Creek Indians, and the causes of their hostilities," has the honor to report, &c.

The settlement of a colony of Englishmen between the rivers Savannah and Altamaha, was projected in Great Britain in the year 1732.

It was to be composed mainly of indigent persons, residing in that kingdom, who were willing to emigrate to the western shores of the Atlantic, and who might protect South Carolina from the hostile incursions of the Spaniards of St. Augustine, and the neighboring savages.

The views of those who were engaged in perfecting this scheme were benevolent. Opulent men contributed liberally to the expenses incurred in transporting a considerable number of settlers to the place that was fixed on for the proposed establishment.

The then reigning sovereign, George the Second, made a grant of land, by letters patent, to those leaders who had generously embarked in this enterprise.

The new province was called Georgia, in honor of the prince who had encouraged this novel undertaking with his peculiar favor.

In the spring of 1733, more than one hundred emigrants, led by James Oglethorpe, arrived at Charleston, whence they soon departed for Savannah.

Although the founders of this colony protested that their views were peaceful and philanthropic, yet a part of the funds advanced was expended in the purchase of arms and munitions of war.

The first acts of these colonists, after they reached Savannah, were to build a fort for their protection; to embody and equip completely all those who were able to take the field; and to appoint competent officers to command them. A treaty of friendship was concluded between Governor Oglethorpe and the neighboring Creeks.

Every man of the colony was at once a soldier, who was armed for war, and a planter, who was supplied with the necessary tools and utensils for agricultural purposes.

Each tract of land granted was a military fief, for which the occupier was bound to take the field, whenever called upon, to repel the attacks of the savages.

All the precautions which were used could not save the colonists of Savannah, and those who settled soon afterwards south of them, on the Altamaha, from frequent wars with the Spaniards of St. Augustine, and their allies, the Creeks. At length, disheartened by the sufferings of twenty years, they at last petitioned to throw off their provincial character, and become a royal colony; which request was granted in 1752.

From this period till the peace of 1763, the settlers were exposed to great dangers, and endured incredible hardships, in continual and bloody conflicts with their neighbors.

The commencement of our revolution was a summons to the Creeks to fly to arms, which was promptly obeyed. They took an active part against us; and even after the general peace of 1783, and the adoption of our federal constitution afterwards, this tribe, headed by their celebrated leader, Alexander McGillivray, who had adhered to the British throughout the recent contest, were the terror of the border inhabitants all along the western frontier of Georgia.

Treaties of peace were made only to be broken. The tranquillity which they promised was soon interrupted. United into small bands; aiming

their blows at different and distant points at the same moment; retiring as suddenly and stealthily as they had advanced; it was impossible for the settlers to know when they would be assailed, or to present an adequate defence at the numerous points where they were continually attacked.

The territory claimed and held by the Creeks in 1732, stretched from the Atlantic to the Alabama river west, and south from the southern boundary line of South Carolina to the northern boundary line of the Spanish provinces of East and West Florida.

Soon after the elevation of General Washington to the presidency, he solicited the Creeks to send delegates to New York, where, on the 7th of August, 1790, their chief McGillivray, and his associates, signed a treaty with the Secretary of War.

In it the United States solemnly guaranteed to this tribe all their lands within the limits of the United States, to the westward and southward of the boundary designated in the said treaty. The peace which succeeded this negotiation was not long preserved. In June, 1796, another pacification was made, and tranquillity was restored once more to the frontier settlers of Georgia.

In June, 1802, this tribe ceded an extensive district of country to the United States. In November, 1805, they made another cession, and agreed that a way for the whites to travel over might be cut through their country. In 1812, they, on being advised of the war between this nation and Great Britain, became hostile, and entered into the contest on the side of the latter. The weakness of the Spanish provinces of East and West Florida opened the way for British emissaries to enter with impunity the ports of St. Augustine and Pensacola, to furnish supplies of arms and ammunition to the savages, and opportunities to incite and bribe them to become parties to the war.

The Indians, always fond of marauding and plundering, yielded to these seductions. After sustaining many defeats, and suffering immense loss, the Creeks sued for peace, and signed the treaty of 1814, by which they conveyed to the United States an immense tract of fertile country. In 1815 another portion of these lands was ceded, lying in the State of Georgia, and in 1821 an additional quantity was conveyed.

In 1826 this tribe sold all the lands which they held within the boundaries of Georgia, and reserved to themselves about five millions of acres lying in the State of Alabama and west of the Chattahoochee river. This remnant was ceded to the United States on the 24th of March, 1832, and has been divided into the counties of Benton, Talladega, Coosa, Tallapoosa, Randolph, Chambers, Macon, Russell, and Barbour.

It is probable that the followers of Oglethorpe, few in number, and with exceedingly limited means, crossed the Atlantic with no expectation that their coming would result either in the total extermination or entire removal of the Indians, first from the sea to the mountains, and then from the mountains to the western side of the Mississippi.

And yet it would now seem that it required no prophet, even at that day, to foretell that such must be the final issue of the establishment of strong and prosperous communities of white men at Newbern, Charleston, Savannah, and throughout the neighboring country.

The extensive region in the rear of the sea was fertile; the streams which penetrated it were navigable; the climate in many parts salubrious and favorable to the culture of the richest staples. The European emi-

grants to the southern Atlantic States were the heralds of religion, liberty, and established law. They brought with them the right of trial by jury; freedom of speech, of the press, and of conscience; the agricultural and mechanical arts; and a considerable share of the suavity and elegancies of refined life.

Against the advances of such a population, which at length was rapidly augmented in numbers, by natural increase and other means, the Creeks saw that they would be unable to make any effectual resistance, unless it were made whilst *they* were strong and their enemies weak. Indignant at the encroachments upon the territory which they claimed and held, they resisted whenever they felt able to do so, and glutted their vengeance at every favorable opportunity.

The attention of the Congress of the confederation was directed at an early day to the condition of the Indians generally. In the celebrated ordinance of that body, of 1787, it was declared "that the utmost good faith should always be observed towards the Indians; that their lands and property should never be taken from them without their consent; that in their property, rights, and liberty, they never should be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity should from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them." But, by the treaty of the Indian Spring of 1826, all the country which remained to the Creeks lay within the boundaries of Alabama, and the care of the tribe was in a great degree committed to her. Shortly after she was admitted into the Union, her legislature enacted "that the civil and criminal jurisdiction of the State should be extended over so much of the Creek territory as was described in the preceding section of the law; provided that nothing in the act should be so construed *as to give any Creek or other Indian any political or civil rights* other than those of protection under the laws of the State, and that they should not be required to perform any public duties or pay any taxes." The jurisdiction of the orphans' court was extended over some of the counties of the territory of the Creeks as early as 1830.

In the same year it was directed that an accurate census of the Indian population in Alabama should be taken by persons appointed for that purpose; but the Creeks were exempted from taxation and militia duty.

On the 16th of January, 1832, the civil and criminal jurisdiction of Alabama was extended over all the Indian territory within her limits. The courts of revenue and roads were enjoined to establish such highways, bridges, and ferries, within the territory in which the Indians might live, as they should think the public good required. The warriors, however, were excused from the duty of mustering, from working on roads, or serving as jurors, or payment of taxes.

The white settlers in the Indian country were to be governed by the same laws as white persons in other parts of the State.

All laws and customs used, enjoyed, and practised by the Creeks within the limits of the State, contrary to her constitution and laws, were abolished.

And it was further enacted that if the Indians should meet in council, and make any law for the tribe contrary to the laws and constitution of Alabama, such Indians should, upon conviction, be imprisoned in the common jail of the county. But the Indians were permitted to meet, by

an act of the legislature, any commissioner of the United States in council; and if any person dissuaded them from so doing, he was liable to be imprisoned. Contracts by white men for Indian improvements were made valid and binding.

These laws excited the animosity of all the Indians, but more especially that of the chiefs. They destroyed their oligarchical form of government, and struck down *their* power at a blow. They and their people were disfranchised; their peculiar usages and customs were abolished; they were stripped of their consequence, for they could no longer meet in council. Roads were to be cut in every direction through their territory; white men were permitted to purchase and take possession of their improvements; the integrity of the tribe as a distinct community was annihilated.

Men of philosophical views and humane feelings at a distance regarded these enactments as harsh, and even cruel, because they did not know the real condition of these savages, and could not forget that they had once been a proud, brave, and powerful people.

But paradoxical as it may seem, it is undoubtedly true, that each of these legislative provisions was an act of gracious mercy to those whom they appeared to be intended in the first instance despotically to oppress, and then finally to destroy.

Circumscribed as the Creeks were, within comparatively restricted limits; harassed by intruders often without principle; pressed upon by a heavy population on the side of the Chattahoochee on the east, and the Alabama river on the west, the collisions between them and the whites were perpetual, bitter, and oftentimes bloody. It is impossible to doubt that there lies in the hearts of a vast majority of the Creeks a lurking, festering, enduring, and treacherous malice towards the race against whom they have been struggling and warring for more than a century.

It is believed that one great cause of the late hostilities of the Creeks is to be found in this enmity, which every observer of the motives that prompt, and the feelings that guide mankind, is able to detect in their bosoms whenever they divulge their inner thoughts to those who can secure their confidence.

The passage by Alabama of the law of the 16th of January, 1832, placed the President of the United States in a position of great delicacy and difficulty. The faith of the nation was deeply pledged to the Indians, in the ordinance of 1787. Alabama, by her law, openly maintained her legislative rights, as a sovereign State of the confederacy. The provisions of that law were directly in opposition to many of the provisions of the intercourse acts passed by Congress, in 1802 and 1807. Alabama declared that such roads should be cut out, such bridges erected, and ferries established in the Creek territory, as her officers might think needful.

The acts of Congress prohibited even the honest grantees of land, which had been long paid for, from raising a tomahawk to renew the ancient marks, or stretching a chain to survey and ascertain the lines of such lands lying in the Indian country, under heavy penalties. In this dilemma, the President invited the Creek chiefs to visit Washington; which invitation was accepted.

To effect a treaty for the conveyance to the United States by the Creeks of the five millions of acres of land still left from the sixty millions which they had formerly claimed, had suddenly become an object of deep in-

terest. But the owners could not be *forced* to sell; and if they did, the terms were at their option.

Guided by the patriotic views and wise maxims of the eminent statesmen of the country, the President resolved, if possible, to avert any painful collision between the federal government and that of Alabama, and therefore pressed a negotiation earnestly upon the Indians. Accordingly, the treaty of March, 1832, was signed and duly ratified.

The material articles of this instrument are as follows:

1st. The Creek tribe of Indians cede to the United States all their land lying east of the Mississippi river.

2d. The United States engage to survey the said land as soon as the same can be conveniently done; and when the same is surveyed, to allow ninety principal chiefs of the tribe one section, and every other head of a Creek family one half-section, each; which tracts shall be reserved from sale for their use, for the term of five years. unless sooner disposed of by them.

3d. Those tracts may be conveyed, by the persons selecting the same, to any other persons, for a fair consideration, in such manner as the President may direct. The contract shall be certified by some person appointed for that purpose by the President, but shall not be valid till the President approves the same.

4th. At the end of five years all the Creeks entitled to these selections and desirous of remaining, shall receive patents therefor in fee simple from the United States.

13th. The United States are desirous that the Creeks should remove to the country west of the Mississippi, and join their countrymen there, &c.: *Provided, however,* That this article shall not be construed so as to *compel* any Creek Indian to emigrate, but they shall be free to go or stay, as they please.

The allotment, in this 2d article, of half a section of land to each head of a Creek family, was an inherent vice in this treaty, but it was unavoidable. The chiefs who signed it recollected that the sale made by McIntosh, in 1826, had cost that leader his life.

It was this allotment that reconciled the nation. They were fed by the delusive hope that they could settle on their reserves, and cultivate and hold them for their own separate use like the whites.

Immediately after the ratification of this treaty, the President directed that the newly acquired territory should be surveyed, and the reserves located; the whole number of reserves was 6,696. Certifying agents were appointed, and the regulations hereto annexed, marked A, were adopted.

To these was added, for the protection of the Indians against circumvention and fraud, an oath, a copy of which is appended, marked B.

The duties assigned to these agents were both difficult and embarrassing. They were wholly ignorant of the barbarous dialect of those with whom they were brought in contact. They were compelled to rely upon interpreters, generally negroes, or half-breeds, who were wholly destitute of all moral principle, and who, for small gratuities, were induced to abet the schemes of those whose designs were fraudulent. They knew scarcely one of these Indian reservees *personally*.

The first sales of these reserves were made about January, 1834. Immediately thereafter the purchasers commenced a partial system of swindling upon the Indians. As early as the 12th of March following, one of

the certifying agents, R. W. McHenry, admitted this fact, in a letter addressed to the Commissioner of Indian Affairs. The money paid to the Indians was taken away from them, after they had acknowledged a sale, either by fraud or force. In some cases, in which they were unwilling to return what they had received, they were whipped into acquiescence. In others, they were paid in bank-notes—a kind of currency for which they feel great contempt, and which they surrendered for a small amount of specie.

The practice of “personation” was not unusual. Indians were bribed to appear before the agents and declare that they were the owners of reserves belonging to others, and they were permitted to acknowledge contracts for the sale of the same.

Although many frauds were perpetrated throughout the year 1834, of the existence of which the agents were apprized, still it was difficult to detect and defeat them. Those who were engaged in plundering these unlettered savages were emboldened by success, and early in 1835 a plan was concocted to sweep off from them all the reserves that remained uncertified, amounting to more than fifteen hundred. In the letter of the late Eli S. Shorter, a copy whereof is hereto annexed, marked C, this purpose is darkly hinted at. In another letter from the same individual, annexed hereto, marked D, his intentions are openly avowed. In it he pours forth his grief and distraction of mind at the signal success of the “Columbus Land Company,” in the accomplishment of their work of cruelty and crime.

He urges his subalterns to accelerated speed; charges them to encamp their Indians out of sight of the road; directs them to be sure to bring two old Indian women with them to the scene of action; and announces the appalling fact, that their rivals had at least four hundred Indians encamped round the hill near the office of the certifying agent.

At the same time a letter, on the same subject, was written by one Benjamin P. Tarver, to M. A. Cravens, a copy of which is hereto annexed, marked E. On the 25th of March, 1835, one Elijah Corley addressed a letter to Scott and Cravens, a copy whereof is hereto annexed, marked F.

It will be perceived, that in the oath, a copy of which is annexed, the following words are employed: “And he, deponent, believes that the Indian who has been introduced before the agent is the true holder of the location described in the foregoing deed.” Subsequently to 1834, in many instances these material words were omitted, and another form introduced, a copy of which is hereto annexed, marked G. Conclusive evidence of the boldness with which these frauds were perpetrated may be found in the statements of Jesse H. Garret, Col. John B. Hogan, and Milton S. Booth, copies whereof are hereunto appended, marked H, I, and K.

It is too true to be questioned, that the Creeks were often treated with a degree of harshness amounting to cruelty, by unprincipled white men who had settled amongst them. The feelings that were entertained towards them are shown in the communications, copies of which are annexed, marked L, M, N, and O.

Complaints having been made to the chiefs Ne-ah-mico, Tucka-batchee Fixico, and others, of the frauds committed on their people, they on the 25th of August, 1835, addressed a letter to the President, a copy of which is hereto appended, marked P. It will be seen that this communication is attested by two half-breeds, Benjamin Marshall and Paddy Carr, who

had acted as interpreters to General Sandford whilst he was certifying, and one of whom (Carr) reads and writes the English language. By their attestation they sanctioned the charges which it contained. It became material, after a while, to those who were stained with the guilt of these transactions, to induce these half-breeds to break the force of the inferences that might be drawn from the fact of this attestation.

These men, Marshall and Carr, had become, like the white men, infected with the prevailing spirit of speculation and swindling, and were likewise engaged in plundering their red brothers.

On the 17th of October, 1835, Paddy Carr addresses himself to Governor Cass, a copy of which is hereunto annexed, marked Q.

The next day Eli S. Shorter, Shorter & Scott, Shorter, Tarver, & Co., John D. Howell, and divers others, with Daniel McDougald, by his attorney John Peabody, made an elaborate communication to the head of the War Department, a copy of which is hereunto appended, marked R, and it is signed by Paddy Carr, as one of the firm of Blake & Carr. But Mr. Shorter was not satisfied with the disclaimers of the deluded and ductile half-breed Paddy Carr, notwithstanding he and Mr. Tarver, and others, had expressed the most profound horror at the falsity of Indian testimony.

The chiefs Ne ah-mico, Tucka-batchee-Fixico, &c., were set upon on the 16th of November, 1835, and induced to sign a paper in which they were made to declare "that they knew of no frauds themselves; that they had heard of none from their people, only as they had been prompted to make them by interested white men." This paper is attested by William Rives, Samuel R. Allston, Luther Blake, and this same Paddy Carr: for a copy thereof, see S.

Although Carr had pledged his *word and honor* to all that was detailed in his statement of the 17th of October, it seems that the cause in which he was enlisted might be aided by his oath and that of Marshall, notwithstanding they were Indians.

Accordingly we find Mr. Shorter, on the 23d of November, 1835, acting for himself and other purchasers, dragging Paddy Carr before one of the highest judicial functionaries of Georgia, and causing him to be sworn to statements about the reserves, that, if true, swept away every suspicion of swindling.

The same course was pursued with regard to Benjamin Marshall, and he deposed that he did not know of a single case in which the wrong Indian was substituted for the true owner of the reserve.

Copies of these depositions are hereunto annexed, marked T and U.

It will be perceived from the evidence adduced, that early in 1834 some frauds were practised upon the Creeks in the purchase of their reserves. That their occurrence excited dissatisfaction and ill temper, was most natural. It is obvious, also, that these frauds were multiplied as the time approached when it was generally believed that the Indians must emigrate. The personal wrongs thus inflicted upon these savages, with regard to their individual property, filled them with indignation, and added strength as well as activity to their hostile feelings, which the melancholy events of other times had planted in their bosoms.

A very considerable number of the reserves had been allotted to *female* heads of families, and many of them were "stolen." Some of this class spoke our language, and uttered their complaints with the greater freedom because they could do so with impunity. They were active and clamor-

ous, and they appealed for redress to their chiefs, as well as to the agents of the United States, with persevering importunity. It is alleged, and no doubt truly, that when the Indians were told that their reserves were "stolen," they were unable to comprehend the idea which the use of this term was intended to convey. They avowed that if this were true, they would take their revenge. Some of them, who knew where their reserves lay, mounted their ponies and rode off to see whether they were gone. When they returned, they declared that what had been told them was false; that their great father, the President, had given them their lands, and would see that justice was done them.

The talk of Opoth-le-yo-holo, at once full of dignity, beauty, and eloquence, a copy whereof is appended, marked V, is a condensed but faithful narrative of truths which are not questioned by any candid and liberal man either in Georgia or Alabama. If the Indians had been honestly dealt by in the sale and purchase of their reserves, there are the best reasons for believing that they would have gone off to Arkansas peaceably in the spring of 1835.

Persuasive means only could be employed to induce them to emigrate. The mode adopted was to secure the consent of some, and then, through them, to operate upon the will of others. But, unfortunately, the Creek country contained more than seventy towns, each inhabited by from two to four hundred persons. If some in each town had sold fairly, and received the consideration due, and others in the same town had been defrauded, the first class would not, and could not, abandon the unfortunate, for they were generally their relations or friends. In this way these "personations" acted with the most fatal effect upon all the benevolent plans of the Executive, to attain this great object.

It would seem, then, that another leading *cause* of the late hostilities of the Creeks is to be found in the multiplied frauds which had been perpetrated upon them by individual white men who had continued to cheat them out of their property.

The avidity with which the Creek Indian reservations were sought for was so great, that many conditional contracts for their purchase were made before the locations were completed. As soon as the certifying agents opened their offices, there were crowds of "land buyers" in attendance.

Those who desired not merely to speculate, but to settle in the country, sought for locations on which some improvements had been made, and were willing to pay higher prices for these than for wild lands.

The cleared lands which had been badly cultivated in former years by the Indian women, now belonged to the new comers; and thus the means of subsistence of the tribe were lessened. But there were some men who wholly disregarded the rights of the Indians; who intruded upon and drove them from their cabins by force, or seduced them to surrender them by artifice or falsehoods. Loud complaints of these evils were made to the President. A military officer was ordered to remove these intruders; in the performance of which duty, a white man was unfortunately killed. This event caused much excitement in the part of the country where it occurred.

The legislature of Alabama thought proper to act upon this subject, and passed the law, a copy whereof is hereto annexed, as well as of the letter of Governor Gayle accompanying the transmission of the same, marked W. As it thus appeared that the State of Alabama desired to rely upon

her own enactments for the protection of the Indians, the President acquiesced.

As the means of subsistence derived from the cleared Indian lands were lessened, the Indians were constrained to place greater reliance upon the game of the forest. But this resource failed to a great degree. They dared not hunt upon the Georgia side of the Chattahoochee. Their own country was already crowded with white settlers, who were as eager and skilful in the chase as themselves. They either killed up the deer, or frightened them off to inaccessible swamps and morasses. Under these calamitous circumstances, many of the Creeks wandered off in small parties, and committed aggressions upon the property of the white settlers. Some attempted to domiciliate themselves amongst the neighboring Cherokees.

The letter of Governor Lumpkin, marked X, of February, 1834, throws much light upon this part of our inquiry. It is abundantly proved that early in that year many of the Creeks were in a state of suffering from the want of food. It would have been impolitic in the general government to have relieved them, because this course would have deterred them from enrolling for emigration.

Towards the close of this year, and in the beginning of 1835, the condition of the Creeks became deplorable. Corn and meat were exceedingly scarce. The white people who had moved in, and who possessed means, purchased at enormous prices all the provisions that were to be sold. It is said, and no doubt truly, that the Indians often stripped off the inner bark of trees, and, after boiling it in water, drank this decoction as a substitute for food. The women and their children asked permission to glean up the small potatoes which were left after removing the main crop, and regarded this permission as an inestimable favor.

All these views are confirmed by the letters of their excellencies Governors Schley and Clay, hereto annexed, marked Y and Z.

The fish in the streams afforded these sufferers a temporary and precarious relief, but they had no bread to eat with them.

The charitable among the whites (and there were many such) could afford only partial assistance. Oftentimes their judgments counselled them to withhold that which their humanity prompted them to grant, because they were convinced that this country could no longer be the resting-place of this unfortunate people. In the words of the chieftain Opoth-le-yoholo, "his people were in much confusion and trouble."

The experience of all time attests that there is no condition of human suffering in which the mind reaches such a high pitch of desperation, or in which the selfish feeling rises to so great a degree of intensity, as that of starvation.

It does not admit of any doubt, that when the Creeks commenced their late depredations, many of them were in this condition, and which was one of the *causes* of their hostilities.

Those who had entered deliberately into the conspiracy to cheat the reserves, employed a class of persons vulgarly called "strikers," who openly set at defiance all regard for morality and decency. They were ordered to rendezvous in the nation, and to make their reports regularly at headquarters. Their business was to "steal" land. They adopted just such a course of conduct as would, in their judgments, achieve the greatest success in their vocation.

In order to secure what was called the "good-will" of the reservees, they selected wives from among the comeliest of the young squaws. They professed to have settled themselves permanently in the Creek country. This good-will was much to be desired, on the score that the Indians were governed more in their conduct by blind attachment to particular individuals, than by their perception of the right or the wrong of any matter submitted to their consideration.

It was important to get back, on false pretexts, the money which they had received in the presence of the agents; and it was equally material to secure the personal attendance of large numbers of the Indians, to accomplish the work of "personation."

If it were necessary, these unfortunate people were made drunk; and then, if necessary, they were starved into sobriety.

As long as there were any reserves for sale, the "strikers" earnestly dissuaded the Indians from enrolling themselves for emigration. In former years, the anxious efforts of the President, as well as of the leading citizens of Alabama, to induce the Indians to treat, had been baffled by the false statements and interested counsel of profligate white men. The legislature of Alabama had been compelled to enact "that if any person dissuaded the Indians from meeting a commissioner of the United States, he should be liable to be indicted, and, on conviction, should be imprisoned for three months."

There came, upon the heels of these "strikers," a crowd of persons having goods to sell, carefully selected and well calculated to captivate the rude fancies of the warriors and squaws.

Whiskey was the charm that was frequently employed to attract the Indians to these establishments. When there, they became intoxicated, often fought, and sometimes killed one another. Sometimes the men and women, equally drunk, lay promiscuously on the ground through the night.

But there was another class of persons who, throughout the years 1834 and 1835, infested the "nation," inferior in wealth and "dignity" to these "storekeepers." They were the shopkeepers who sold only whiskey and tobacco. The Indians gathered around these haunts of vice, and often remained in and about them for days. If those who were there possessed any property, they were credited, and soon warranted. The white man was permitted to swear to his account, and the testimony of an Indian could not be admitted to contradict any facts that might be alleged. Judgments were rendered, and the property of the defendants taken by the constables, some of whom had as little principle and humanity as their employers. This universal profligacy and debauchery produced, in the Indians, ill temper and bad feelings towards the whites, and a recklessness which constituted another prominent *cause* of the hostilities of the Creeks.

The Creek Indians, before their removal, had realized but very few of those advantages which are sometimes secured by the contiguity of a savage to a civilized and intellectual community. Their women had acquired some knowledge of spinning, weaving, and sewing. In their dress they displayed some taste. Generally, the men had put up cabins, which were warm in winter; but the tribe possessed no distinct perception of the value of comfort in their domestic establishments. Their fields were imperfectly cleared, and their fences badly put up. Their mode of

tillage was miserably defective, and the yield comparatively small. Nevertheless, these savages cherished a passionate attachment to the land where they were born, and where their ancestors lay. This "love of country," when analyzed, is found not to lie in affection for the soil itself, but in a vivid recollection of all those endearing associations with which mankind become familiar in their advance from youth to manhood, and from manhood to old age.

The Creeks regarded their eternal separation from the country of their nativity with a kind of superstitious horror. Whenever the news reached any portion of them that any agent had arrived to enrol them, it was taken, with the utmost speed, to all the towns, by runners despatched for that purpose, and excited universal alarm.

During the years 1834 and 1835, the number of suicides committed by these people was enormously large. The warriors went into the woods and hanged themselves with grape-vines; and when, at last, they did remove, some of the women erected piles of light wood over the remains of their relatives and friends, and burnt them in honor of their memories.

Others cut down the fruit trees that grew over the graves of their children, declaring that the white man should not enjoy any benefits from them.

Although the President forewarned this people, with paternal anxiety and tenderness, that, unless they determined to emigrate, they must, from the influence of causes which no human power was able to control, soon cease to exist as a tribe or nation, yet their repugnance to the measure could not be entirely overcome. This aversion to a removal, beyond all doubt, was one of the most powerful *causes* of the late hostilities of the Creeks.

Those who have been appointed by the President, under the authority communicated by the resolution of the House of Representatives of the Congress of the United States, on the 1st of July last, have been earnestly engaged in investigating the frauds to which reference has been made in the foregoing part of this report. They have already restored a considerable number of reserves to the true owners. They believe that in a very short time they will be able to reach and overturn a vast majority of the frauds that have been perpetrated upon these reservees, and upon the clearest evidence, as well as the soundest principles of the law.

ALFRED BALCH.

JANUARY 14, 1837.

Extract of a letter from Colonel John B. Hogan, dated Mobile, December 28, 1836, to Messrs. Crawford and Balch, commissioners to investigate frauds, &c.

There is, also, one fact more which is alluded to by Opothleyoholo, viz: that a white man read some papers to the Indians at their houses, which papers were said to have come from across the big water; that he did not understand it; but no Indian could make such papers: and, about that time, a silversmith, who formerly resided in Columbus, Georgia, being arrested and put in jail at Montgomery for instigating the Indians to make war on the whites, it occurred to me that this fellow was the man alluded to by Opothleyoholo. I accordingly went to the jail, in company with Colonel Acklin and Major Reid, of Huntsville, and questioned this man concerning the papers he had read to the Indians: he admitted he had read papers to

them, and said he had explained them as far as his knowledge of the Creek tongue would enable him to do. I asked him what sort of papers were those he had read to the Indians? He said they were printed proclamations issued by Sir George Cockburn twenty years ago, while Sir George commanded the British fleet off Pensacola; that these proclamations were issued to incite the Indians to make war on the whites; that they promised a large force to help the Indians in the spring. I asked him how many of these papers were issued among the Indians? He said he had seen several. I then asked him the name of the Indians who had those papers, and at whose house he had read them? He replied, that he was now in prison on a charge that might take his life, and he must be excused from answering that question. I interrogated him further as to his birth, and his having stated himself to be a son of the old Prophet Francis: he said he was born in London, and was the son of Francis; that his mother had told him so, and he had no reason to believe otherwise. To other questions as to who employed him to go among the Indians and read these old proclamations, &c., he did not answer me satisfactorily.

A.

Regulations for certifying contracts under the Creek treaty of March 24, 1832.

1st. All applications for certifying contracts under the above treaty, in order to procure the assent of the President to the conveyance, shall be made in writing, and shall be accompanied with the written contract itself.

2d. If the payments are all made to the satisfaction of the Indian, and the facts clearly established in the opinion of the approving agent, then an absolute deed from the Indian to the white person may be certified.

3d. But if the payments are not all made at the time of the parties appearing before the approving agent, then the contract must distinctly state the time and modes of payment, and the amount actually received.

4th. As a general rule, no contract will be approved, unless a consideration equal at least to one dollar and twenty-five cents per acre is paid or secured to the owner.

5th. In all cases the agent will make such inquiry as may be in his power into the actual value of the tract; and if he believes that such value is not paid or secured, he will not certify the contract.

6th. As from representations recently received from one of the commissioners appointed to make the locations, it appears that many of the tracts are not so valuable as has been heretofore supposed, nor probably worth the minimum price fixed for the public lands, the President does not think it just that that sum should be actually paid in every case. When, therefore, a less sum is agreed upon between the parties, the approving agent will endeavor to ascertain the actual value of the tract; and if he believes the amount agreed upon is a fair price, he will so certify, and his certificate will also contain a general description of the tract, agreeably to the best information he procures. In all cases arising under this section, the circumstances will be particularly examined by the President, whose decision will be made as may appear to be just.

7th. The agent shall, in every case where it is practicable, have an interview with the Indian, explain to him the transaction, and ascertain whether he understands and approves it on a full consideration of the matter.

8th. When, however, the Indian cannot appear before the approving agent, in such a case the clearest proof must be adduced of the nature of the transaction; and the return must show this proof, and must also state why the Indian was not present.

9th. No patent will be granted until the whole payments are completed.

10th. Copies of the contracts, to be furnished by the parties themselves, will be retained by the approving agent, and the originals will be transmitted to this department for the consideration of the President.

11th. The approval of the agent will in no case be final, nor will the title of the grantee be valid, until the President approves the same. Possession may, however, be taken of the tract as soon as the agent certifies the contract, but in such case the party will be liable to removal if the President should decline to approve the same.

12th. A contract for any tract may be certified as soon as a proper locating agent shall assign it to an individual Indian; still, however, it is to be observed, that if the President should not confirm such location, the whole proceeding in relation to it will be void.

13th. The ceded territory must be so divided by the approving agents among themselves, that each may be confined in his operations within a given district; so that applications rejected by one agent may not be acted upon by another.

14th. The following is prescribed as the general form of the certificate, subject to such variations as circumstances may require:

"I certify that I have examined the contract between A B, a Creek Indian, and C D, for the conveyance to the latter (here describe the tract, agreeably to its designation on the plat of the township;) that the said A B has appeared before me, and, after the transaction was fully explained to him, he approved the same. The sums stated to have been received by him were paid in my presence, (or were distinctly acknowledged by him, or were clearly proved to have been received, as the case may be.) I consider the price given the full value of the land, and certify the contract for the consideration of the President of the United States."

Where the Indian is prevented by proper circumstances from appearing, then the certificate will be varied so as to show those circumstances, and the nature of the proof by which the payments are established.

Where the price agreed upon is less than \$1 25 per acre, the agent will add to his certificate a statement that "the land is proved, to my satisfaction, to be of an inferior quality, (being sandy or marshy, or containing so many acres only which can be cultivated, or specifying any other facts which may have come to his knowledge showing its quality,) and that I consider it worth only (here insert the sum.)"

LEWIS CASS.

WAR DEPARTMENT, November 28, 1833.

Approved: November 28, 1833.

ANDREW JACKSON.

Supplementary regulations, in addition to those approved by the President November 28, 1833, for certifying contracts under the Creek treaty of March 24, 1832.

In consequence of a representation from one of the certifying agents, that a construction would be put upon the above regulations which would inevitably lead to the committing great frauds upon the Indians in consequence of the facility of imposing on them, and the ease with which declarations or acknowledgments may be procured, the President is desirous of guarding against such a result, as far as in his power, and of securing to every Indian the receipt of a just consideration for his property.

The following additional and explanatory regulations are therefore adopted:

1. The payments required by the 2d article of the above regulations must be made in the presence of the approving agent, except in the very few cases where the Indian may be prevented by illness or inability from appearing before the agent. But such cases must be proved by the most unexceptionable evidence, as well as the payments made under them; and the circumstances must be distinctly stated for the consideration of the President.

2. The contract described in the 2d article of the above regulations must be entered into subsequent to the location of the reservation.

3. The form in the 14th article will be so varied as to omit the words "or were distinctly acknowledged by him, or were clearly proved to have been received, as the case may be," except in the cases described in the 1st article of these supplementary regulations, where the Indians are prevented by disability from personal attendance.

LEWIS CASS.

WAR DEPARTMENT, December 18, 1833.

Approved: December 18, 1833.

ANDREW JACKSON.

B.

Personally appeared before me, _____, a judge of the county of _____, of the State of Alabama, the said _____, being the purchaser within named, and being duly sworn, deposeth and saith, that the amount of _____ dollars, being the consideration money for the said tract of land, is correct as stated in the within contract; and that the amount of _____ dollars, acknowledged to have been received by the said _____, was actually paid by him, as stated in the within contract. And the deponent saith further, that he believes the Indian who has been introduced before the agent is the true holder of the location described in the foregoing deed.

Signed, acknowledged, and sworn to before me this _____ day of _____, 1834.

C.

COLUMBUS, *January 28, 1835.*

GENTLEMEN: It becomes my duty to apprize you of a new movement in regard to our Indian relations, which deeply affects our interests and operations. General Sandford has stated that, on the 1st of March, himself and McHenry will cease certifying, and I presume Judge Tarrant will do the same. This is the *government order*. Why it is so, or what is the object, none of us know. But one thing is certain, that every Indian in the eastern, and, I have no doubt, also in the western part of the nation, who does not sell in the next month, will lose the chance of selling altogether; and, by some manœuvre, their lands will become government property. It will be remembered that, at the last Indian council at Fish Pond, the government caused a proposition to be made to Hopoeithloyoholo to purchase the unsold reservations: that he replied, it was more than he dared, at that time, to do; but that if the government would wait till his return from the west, in the spring, he would answer the application. It will be remembered, also, that a delegation of the Cherokeees attended the above meeting, and urged upon the chiefs of the Creek nation the propriety of raising a large joint national fund for their mutual use in the west. Let it also not be forgotten that Hopoeithloyoholo is now at the west, and expected back the 1st of March, and that a delegation of Cherokeees is now at Washington. When all these particulars are put together, you will see that the private Indians, who are so foolish as to refuse selling, are in a fair way to have their lands applied to the raising of a national fund, in which they will have now *individual benefits*. Whether the government can treat for the unsold lands or not, or whether they can or will purchase the reservations from a few chiefs, is not material; for if the certification is stopped, neither they can *sell*, nor *we purchase*. Now I pray you not to treat this lightly, for I have hastened Mr. Tarver off, the morning after getting the news, that you may be put on your guard, and make the most of the time left you. It is important that you press this subject immediately upon the attention of Smith, and the Griersons, so that they understand it, and let them spread it among the Indians. They have but one moon in which to save their lands. Better by far had they had their lands certified without receiving a dollar, and leaving it open to an arrangement with us to be paid hereafter, when they are willing to sell, than thus to be cheated out of their rights. To Dr. Scott I urge that he give up the beautiful Miss Jenney for the present; that he lay aside his poetry, come down from his stilts, and rouse up from his slothfulness, and spend one short month in unceasing energy and unwavering industry. To the Messrs. Craven I say, that they will swear off from the society of ladies for one month, and make every *day* and *hour* of it tell profitably upon our business. And upon *you all* I urge an immediate close of every contract upon which advances have been made, and the making of no more advances; for all contracts made, and not closed, will be dead losses. After this is done, the great struggle should be for the *most valuable* lands. Every man should now be at his post. Is there *no chance* to make an impression on those valuable lands in Tuckabatchee—say Little Doctor's, Yargo's, Madblue's & Co.? If I

were now with you, I would spend the month, and show you how much labor I could perform.

Yours, respectfully, &c.,

ELI S. SHORTER.

To Dr. JOHN S. SCOTT, and
Messrs. M. M. & N. H. CRAVEN,
Fish Pond, Alabama.

D.

COLUMBUS, *March 1, 1835.*

GENTLEMEN: I have just returned from Dr. McHenry's; when there, Yargo sold and certified his land to Dr. Billingslea for \$6,000, and then gave back \$3,000 of the money, and took a bond for the occupancy of the land west of the river. I left at the agency Hayden and his son, General Woodward, Stone, McBryde, Collins, the whole Columbus company, and a host of others, with, I firmly believe, four hundred Indians hid out all around the hill. Certifications commenced late yesterday morning, and about sixty were taken through. The agent will be at home certifying the whole of next week, and, in that time, most if not all of the land will be swept that is worth a notice. I have the agent's promise to meet us at any place of our appointment on the Monday afterwards; and to obtain this, I have had to interest another man in our company, so far as it regards McHenry's district, and to give him one-eighth part. It is unnecessary to mention names; the thing was necessary, and was therefore done.

Now, if we are to do anything, you must *instantly*, upon reading this letter, lay all other business aside, and gather up as many Indians who can be depended on as possible, and Corley or Craven, with one of the Griersons, must come on with them towards the agency in Chambers. The other, with the other Grierson, must remain behind, and collect and come on with another company. When you get within from 5 to 10 miles of the agency, stop where you can get water and provisions, and send a messenger to us at the agency, to let us know where you are, and we will meet you Monday morning with the agent, and proceed to business. Your messenger must reach us on *Sunday* night. Camp your Indians *out of sight of the road*. You need give yourself no trouble about the *value* of the land; I will arrange all that. *Stealing* is the order of the day; and out of the host of Indians at the agency, I don't think there were ten *true* holders of land. When I left, there were not more than 80 reservations left in all Tuckabatchee; they will go to morrow; then will follow Thlobthlocco, then Kialige, then Oak-tar-sar-say; then Eufaula; and, in two weeks, the whole host of Philistines will be in your quarter; and, rely upon it, they will carry all before them.

Now Scott may wrap himself in his Indian blanket, and say all this is impossible; but I say it is not only possible, but *certain*. When I see such men, with so few advantages, getting so much valuable land at \$10 per tract, and how much money *we* have paid out, the *power* we have had, and see the *quantity* and *quality* of land we have received, and particularly when I think of the *reason* why these things are so, I can almost tear my hair from my head. There is yet time to do something, but I

almost despair of its being done. If Scott's Indian wife was at the devil, I should have some hope.

We shall go into the strife and do what we can. If you will join us—well; if not—well. We have plenty of money. You need not come unless you will drill your Indians, and prepare them to receive ten dollars *in the store* for every contract certified. Be sure to bring *two old women*; and, if you possibly can, be sure and bring Tallan-har, an old woman of Thlob-thlocco town, who is the mother or mother-in-law of John Rud, an interpreter, who was killed last year.

The whole show will be up in four weeks from this time, and all the Indians who do not sell will lose their lands. This system has not been working more than three weeks, and upwards of 1,000 tracts have been certified. The stream is getting wider, deeper, and stronger every day. If things are to be radically altered *as to money* at Tallapoosa, I will furnish funds in *paper money* to certify the balance; if not, the Indians may be disbanded, and we will quit the drive, for I will stand the past pull no longer; and if Dr. Scott adopts the rule of settlement at the *certified prices*, it must be a good rule, and shall apply to *all cases*.

Respectfully, &c.,

ELI S. SHORTER.

To Messrs. JOHN S. SCOTT, E. CORLEY,
M. M. & N. H. CRAVEN, *Tallapoosa*.

E.

COLUMBUS, March 1, 1835.

SIR: Mr. Corley gave me time to be there to close the trade with him until I could get out, or until they commence certifying. As my business in court is not settled, I am unable to say when I shall be there; and if you have not closed the trade with Mr. Corley, you will do it for me, if you are not disposed to go into it; but I prefer your connexion in the matter. There is nothing going on at this time but stealing of land with about fifty Indians. Pay them \$10 or \$5 when certified, and get all the balance back, and get 400 or 500 contracts certified with 50 Indians, is all the game. Judge Shorter has just returned from Dr. McHenry's: he states the different speculators have about 500 Indians hid out and certifying at night. Yargo is certified to; without a rush, we are gone.

BENJAMIN P. TARVER.

James S. Moore was married on to-night. The Judge thinks that the largest proportion, if not all the land that is before Dr. McHenry's, will be certified on this week. Now is the time, or never! Hurrah boys! here goes it! let's steal all we can. I shall go for it, or get no lands! Now or never!

BENJAMIN P. TARVER.

MR. M. A. CRAVEN.

F.

COLUMBUS, *March 25, 1835.*

GENTLEMEN: I intended to have started to the store in Tallapoosa to-day: but Judge Shorter thinks it best for me to stay and attend McHenry's office next week. I want you, so soon as you get this letter, to start Bailey and Wat Grierson over with as many Indians as they can start. I want them to be at the office with the Indians next Monday, if they can; and as to the balance of you, you must be up and doing; for I can assure you, what we don't do before Tarrant, the next week of certifying, will not be done by us; for just as soon as they finish on this side of the Tallapoosa, every speculator will be over there. They intend first to try to get a part of that district cut off to McHenry; and, if they fail in that, they will take their Indians and go on; for those lands are what they are after, and they will have them. They have rogued it and whored it among the Indians, until I fully believe that, for the purpose of getting a piece of land, they would swear before Almighty God that the Indians in Russell county were located in Coosa. I think it necessary that one of you go down to Hatchechubba and Hickory Ground towns, and have the best of the lands valued, and ready for certifying, as that is the part of the country they intend stealing in. Gentlemen, don't lie on your oars with the belief that no man can do anything with Indians in that part of the country; for they have Indians of their own, and will fetch them with them. The harvest is nearly over, and perhaps there will never be another such a one. I therefore think it necessary for us to be up and doing while it lasts.

Yours, respectfully,

ELIJAH CORLEY.

TO SCOTT & CRAVENS,
Tallapoosa, Alabama.

N. B.—The Judge says he thinks it best to put off the settlement with the Indians on that side until after the next week. There is plenty of money here ready, but we thought it best not to send it until there are two or three in company. M. A. Cravens must be certain to come with Wat and Bailey. The Indians killed old ——— last night, but for what cause we have not found out.

Yours, &c.,

E. CORLEY.

G.

THE STATE OF ALABAMA, } ss.
Russell County,

Personally appeared before me, ———, a justice of the peace for the county of Russell, State of Alabama, the said ———, the purchaser within named, and being duly sworn, deposeth and saith, that the amount of ——— dollars, being the consideration money for the said tract of land, is correct, as stated in the within contract, and that the

amount of _____ dollars acknowledged to have been received by the said _____ was actually paid by him as stated in the within contract.

Signed, acknowledged, and sworn to before me this _____ day of March, 1835.

H.

DECEMBER 28, 1836.

1st. Did you reside in the neighborhood of the place where Dr. McHenry was certifying contracts for Creek Indian reserves in February and March, 1835?

2d. Who were there inducing Indians to appear before Dr. McHenry at that time? If you know, name them. Did they buy provisions from you to feed the Indians who were encamped near where Dr. McHenry then was?

3d. What declarations were made by those people about their stealing Indian reserves? State, if you please, the acknowledgments of these people about the frauds they had committed.

Answer to 1st interrogatory. I did, about the 25th day of February. I lived near Dr. McHenry's office, with a stock of goods, and commenced selling goods about the 1st March, 1835.

Answer to 2d interrogatory. I did sell provisions to a number of gentlemen, about the 10th of March, 1835, to wit: to E. Corley & Co., and McBryde & Co., and Mr. Stone, and Mr. Haden.

Answer to 3d interrogatory. In a conversation between myself and Messrs. E. Corley and Craven, they stated to me that they stole that week one hundred and eighty contracts.

JESSE H. GARRETT.

I.

MOBILE CUSTOM HOUSE,
December 27, 1836.

STATE of ALABAMA, }
Mobile County, } ss.

Personally appeared before me, F. M. Alexander, a justice of the peace in and for Mobile county, John B. Hogan, who, upon being sworn, deposeth and saith: That he has been called on by Messrs. Williams and Phillips, attorneys-at law, to state what he knows on the subject of a claim of a certain Enchee Indian to west half of 6, 15, 28, who stands on the roll of High Logtown Enchee, by the name of Thlo-with-la. This deponent states that he was charged by the United States government with the investigation of the alleged frauds in the sale of Creek reservations; that early in February last, he held a council at a place called the Big Spring, where all the Enchees met him, and where he heard their complaints; that among those who complained was an Indian named Thlo-with-la, who was identified as the owner of the W. $\frac{1}{2}$ 6, 15, 28, and whose

identity was not questioned by any person present, but whose land stood marked on Sandford's books as sold to Fanning & Howell for \$400. Mr. John D. Howell was present. The Indian stated that he had never been before an agent for the purpose of selling his land, nor had he ever sold it. Upon inquiry among his chiefs and neighbors, they all testified to the same fact. I called on Mr. Howell, then present, to make a defence. He said he could not tell whether the land was his or not; that he had never bought the land, but that it was one of his partner's transactions; and Mr. Fanning, his partner, was dead. I told Mr. Howell I should mark it as a case to be reversed, and did so. Mr. Howell went out of the cabin where I was sitting, and took Thlo-with-la off with him; and after a while, came back and insisted that I should hear Thlo-with-la acknowledge that he had sold his land to him, Howell. I was much engaged at the time in hearing another case; but to get through with Mr. Howell, took up the case of Thlo-with-la again. Mr. Howell stated that he had now bought the land of Thlo-with-la, and had paid him \$400 for it; and he only wished me to hear him acknowledge it before me. I then directed my interpreter to ask Thlo-with-la if he had sold to Mr. Howell. He replied that Mr. Howell had pushed him so hard, he supposed he must let him have it. I asked him what he was to receive for his land, and whether he was satisfied with the same? He replied he had received \$20 in silver, and a paper for the balance, \$380. I asked him to let me see the paper, which he handed me, and which ran as follows: "I have purchased Thlo-with-la's land, W. $\frac{1}{2}$ 6, 15, 28, and he has my permission to live on it.—John D. Howell." I read the paper aloud, and asked Mr. Howell if he intended that paper to represent a debt of \$380, which he owed Thlo-with-la; and if such were his intentions, I would add the obligation to it. He said I might do so, and I accordingly did so. But Thlo-with-la then refused to receive it, saying as he had attempted to deceive him, he would not have it. I told Thlo-with-la, that if he refused to let Mr. Howell have the land, he should return him the \$20, which he indignantly threw on the table, and retired. Mr. Howell then took up the money, put it in his pocket, and also retired. I was not aware at the time that this piece of land had been returned by General Sandford as certified before him; but on my return to Fort Mitchell, I then examined the official record of unapproved contracts sent from the War Department, and found this case among them. The reason for examining that document occurred in this way: A Mr. Corner brought Thlo-with-la before me, after the transaction alluded to, for the purpose of having his land certified to him. On his arrival at Fort Mitchell, he came to my quarters, and so did Dr. A. J. Robinson, a land speculator of considerable notoriety; and Robinson began bidding over Corner for Thlo-with-la's land, and ran it up to \$1,800. I then stated that as that was a good price, if the land had not been stolen, I would certify to the sale, and Corner agreed to let Robinson take it. I immediately examined the list of unapproved lands, and found it on that list, and then told the parties I would do nothing with the case until the department reversed it. Mr. Howell came in my room a few moments after, and stated he should contend for the land, and would not give it up. I saw no more of Thlo-with-la until we reached Hatchechubba with the army in June last, when Thlo-with-la, and twenty-one friendly Enchees, joined the Indians under my command. He remained with me until I discharged the friendly Indians, and was out on a scout with four others, when they met

Scroggins and a party of Alabama volunteers, who fired on them, and killed all but Thlo-with-la, who came into my camp at Big Spring, with Scroggins and the party who killed his friends. I have no doubt whatever that Thlo-with-la was personated when his land was certified to; and that he never did sell, or receive anything for his land, except such as was returned in my presence.

I have inserted the words, "that Mr. Howell took up the \$20, put it in his pocket, and retired also."

JOHN B. HOGAN,

Late Sup. of Choctaw Emigration, and investigating agent.

Sworn and subscribed by the said John B. Hogan, this 29th day of December, A. D. 1836, before the undersigned, justice of the peace in and for the county of Mobile, and State of Alabama.

F. M. ALEXANDER, J. P. M. C. S. A.

K.

Milton S. Booth declares, that he has lived in Barbour county more than three years, and in Ufaula town; he is well acquainted with the Indians, their habits and modes of life. The treatment of the whites to the Indians was, in many instances, cruel; they often whipped them, and often considered that Indians had no rights.

Many frauds were committed on the Indian reservees. He recollects well one case, in which an Indian reservee was killed on Thursday evening, and on the following Monday his reservation was certified before General Sandford by "personation."

MILTON S. BOOTH.

JANUARY 9, 1837.

L.

TUCKABATCHEE TOWN, March 16, 1835.

We, whose names are hereunto subscribed, being head chiefs of the Creek nation, humbly petition your intervention to stop fraud being practised upon our people. It has become notorious that we are daily having our lands stolen from us by designing white people.

The Indians living on the east side of the nation have long since disposed of their lands, and are now following the agents in our section of country, with a band of white speculators, claiming other Indian names, and having undisposed of lands certified to. This course of conduct has been introduced about twenty days ago, and has succeeded in getting all unsold land, except such of the Indians as the agents are personally acquainted with. A number of our people have died since being located; all such cases are stolen by living Indians, by the influence of white men. We believe, without your interference, justice will not be had: we pledge ourselves that every statement here made can be established by disinterested white people. During the last ten days we have no doubt that hundreds of Indian names have been stolen and certified to,

when the right owners were at home, and knew nothing of such contracts.

We now humbly beg for an investigation to be had, and that the white people making such purchases be requested to produce the Indians before the agents, so that such Indians having a just right may have an opportunity of establishing their just claims. This course will bring round an opportunity of introducing correct proof. We find that such Indians as are stealing get but a small pittance in comparison to the fair value; for the lands are certified to any large prices, and the money immediately taken from them, telling the Indian that it is likely this contract will not be approved of. We sincerely petition you to adopt some plan whereby justice may be had. We will ever pray.

Your red brothers,

HOPOTHLOHOLO, his $\times$ mark.

YOUNG KING, his $\times$ mark.

TUSKENEAAH, his $\times$ mark.

LITTLE DOCTOR, his $\times$ mark.

FOSACHE MICO, his $\times$ mark.

LATTAH MICO, his $\times$ mark.

OLD KING, his $\times$ mark.

MICCO OBOY, his $\times$ mark.

To Hon. SECRETARY OF WAR.

M.

COOSA COUNTY, *February, 1836.*

KIND SIR: From what I can understand from the chief of this town, he wishes me to accompany him to Tuckabatchee, to inform you of the way and manner that he was treated by the sheriff of this county and the Messrs. Walls: which I would do, but circumstances will not admit of my leaving home at present; therefore, I will write you the circumstances as near as I can recollect. The time I disremember, but I think that it was about the first of January last. I had collected several of the Alabama Indians at Mr. Woodruff's store, to purchase their lands; we were all seated some forty or fifty yards from the storehouse, and Seakabeachy and some other Indian were off some distance from us, talking, when Mr. Coker and the Messrs. Walls rode up. Mr. Coker got down, went to where Seakabeachy was, and took him by the arm and led him up within a few paces of the storehouse. He then, as my lincester told me, called to him to come and talk for him, which I told him to do; I walked up with him. He then told the lincester to ask Mr. Coker if he owed anything, and how much, for he was able to pay any that he owed. The reply from the sheriff (Mr. Coker) was, that it was no amount of money, but that he had to go with him and stay till court. Seakabeachy then stepped rather back, and said that he was able to pay his debts, and would not go to jail. The sheriff then called to Albert Walls to fetch him a rope. I then stepped off to see if Mr. Woodruff was willing to go in with me as his security for his appearance at the next term, having learned that it was a bail writ. About that time the sheriff struck him with a stick. I still continued my course. About the time that I got into the house, I heard the report of a pistol; I ran back to the sheriff, and the

two Messrs. Walls were beating him with sticks; at length, they beat the old fellow down, and tied him, put him on a horse, carried him about a half mile to old Mr. Walls's store; staid there but a short time; they then, as I understood from the same party, carried him to Mr. Coker's house, and chained him, and kept him for several days. And it is said that he put seven hundred and fifty dollars in the Walls' hands, as his security for his appearance at court. That is all that I know about the circumstance. No more; but I am

Yours, with compliments of high respect,

JOHN MURCHISON.

Colonel HOGAN.

N.

STATE OF ALABAMA, COOSA COUNTY.

SIR: This is to inform you that this day Lacheshoyo came to me about the midst of the afternoon, and says that Albert Walls took two hundred and forty three dollars from him; took and tied him, and said that they would take him to Montgomery jail, if he did not give up his money. I was at home as Mr. Walls passed by, and Mr. Butts, and another man that was along, as the Indian says; and the Indian came up directly after they passed by. I have no doubt but they got the money. And I will be glad if you would write to me how you will proceed; and, if I can do you any good, I shall not stand back. Nothing more, but remaining yours, this 21st day of February, 1836.

J. B. MORRIS.

To Mr. HOPOTHYCHOLO.

O.

TUCKABATCHEE, *February 14, 1836.*

DEAR FRIEND: I have been waiting in anxious expectation to see you for some time, but have been disappointed. Owing to the many complaints which are lodged with me daily, from the chiefs of the different towns of Judge Tarrant's district, compels me to address you a few lines in behalf of them, to inform you of the frauds which are practised on them daily in that district. You being the only friend at this time in whom we can confide, compels me thus to address you. The chiefs inform me that the white people have persuaded nearly all those people to sell their lands; and, after having had their land certified to and received their money, they have been made to give it up again by the very men who have bought their lands, either by force, or tales raised for the purpose. They have been told by these men that it was General Jackson's wish that they should not hold money, and that they had been sent as agents to receive their money, and hold it until they arrived in Arkansas; and, consequently, a great many of them have given up their money, thinking that whatever their great father said could not be otherwise than for their benefit; and whenever those tales would fail, it has been taken by force. It was their

calculation to have emigrated last fall, and, consequently, they sold all their cattle, corn, and everything necessary for a support, and are now left in a state of starvation; and it is their earnest request that you should come up amongst them, for it is highly necessary that something should be done immediately. You will please answer this as soon as you receive it, and inform me at what time you can go up; or whether you can go or not, in order that I can inform the chiefs when to expect you.

Your friend,

his
HOPOITHLE + YOHOLO.
mark

JAMES L. ALEXANDER.

To Col. JOHN B. HOGAN,
Fort Mitchell, Russell County, Alabama.

P.

STATE OF ALABAMA, CREEK NATION,
August 25, 1835.

To the PRESIDENT OF THE UNITED STATES:

DEAR SIR: The nation of which we are the chiefs have never found you wanting in disposition to do them justice, as far as you could, and they therefore appeal to you now with confidence. It has been made known to you before that wrong had been done, and frauds committed on many of our people, by the whites, who have managed to get their land by hiring one Indian to assume the name of another. This has been done in obtaining a great portion of lands belonging to the Indians in the Cusseta, Ufaula, Uchee, and other towns; which can be made to appear whenever those whose land has been stolen can have a chance to show it. We know that you sent our friend, General Sandford, to investigate these frauds, and have justice done to those that had been wronged. He could do nothing because the Indians were afraid to go to Columbus, being alarmed at what was told them. When the agent, General Sandford, came to Columbus to attend this investigation, I, Ne-ah-mico, as head chief of the nation, called on him; when he informed me that he had returned to look into the frauds, and that I must let the Indians in his district know it. I accordingly informed the Indians, who, as soon as they got the information, a great many of them who had never sold their land, came to my house, on their way to Columbus, to meet the agent. Whilst at my house, and at other places, they were told by the linguists that had been employed by the whites to purchase land; that all the agent and other persons wanted was to get them to Columbus in order to arrest some of them for old debts, and enrol and send the balance to Arkansas. This so alarmed the Indians, that none of them could be prevailed on to go before the agent. I then wrote to the agent to meet the Indians on the Alabama side of the river, where they would be free from the fears of arrest and enrolment; but he refused to meet them there—from what cause we do not know. Soon after this, he left for Washington city. Now, on his return from there, he states that nothing can or will be done further, and that he has written to you to approve all contracts. In addition to the above, we would state

that many of the Indians whose land had been wrongfully taken from them, live a considerable distance down the river; and before the agent had returned to investigate their claims, and could get to Columbus, the agent had left there for Washington city. From all this you will see, although many of the Indians have been wronged and defrauded by the unjust conduct of some of the speculators, that they have had, as yet, no chance to be righted. The time is approaching when the Indians will have to emigrate, and many of them are now willing to go; but, as they have received nothing for their land, and feel that they may yet be righted by the President, they make this last appeal to his justice, and desire to remain until the frauds can be detected, and they have a chance to sell the land granted them by the treaty. For this purpose, they hope that the President will appoint an agent—one acquainted with the Indians, and in whom they can place confidence, with instructions to visit the chief towns, and other places in the nation, where they can meet him without fear, and prove before him the frauds that have been committed upon them. We know, of our own knowledge, that many have lost, or are likely to lose, their land, who never have sold, or pretended to sell; and it will be made plain if an agent can be sent among us as desired. There are many Indians, also, who have never yet sold their land, or had it taken fraudulently: these are desirous of selling, that they may make preparations to emigrate; but, as there is at this time no certifying agent, they have no chance to sell. We desire the President, therefore, to give the agent above requested (if he should be good enough to appoint one) full power to certify and sign contracts hereafter to be made. The Indians, as our friend well knows, are ignorant of their rights, and easily imposed upon. Many of the whites are unjust, and take advantage of their ignorance. In buying their lands, frauds have been committed which can be brought to light. We do therefore make this most earnest appeal to our great friend, the President, that, as far as he can, he grant us what we do not believe he can deny to the feeble and the injured. If he can do nothing for those of our nation who have been injured, they must submit to it; but if he can, it will be an act of justice to the oppressed, and of punishment to those that have wronged them.

NE-AH-MICO,	his + mark.
E-FAR E-MUBLAR,	his + mark.
TUCKABACHIE FIXACO,	his + mark.
CAR-PIC-CHAR-YO-HO,	his + mark.
NE-HAR-THLOCTEO,	his + mark.

Witnesses—B. MARSHALL,
PADDY CARR.

Q.

GERARD, ALABAMA, *October 17, 1836.*

SIR: Some time since, myself and Benjamin Marshall witnessed a letter written for, and signed by, Ne-ah-mico, Efi-Emarthlar, &c., directed to yourself. From the course subsequently pursued, it would seem that the letter in question has had an influence not warranted by the facts, and I feel it my duty, in justice to all concerned, to set the matter right.

The two chiefs mentioned are near neighbors of mine: I know them well, and am in the habit of daily intercourse with them. The letter was suggested, not by the Indians, but by two interested white men. Ne-ah-mico has subsequently stated to me that he knew nothing about the subject-matter of the letter, but had been told and urged to do as they did by Dillance and Chapman, two white men, who had paid a lawyer for writing the letter. Many of the statements contained in the letter are not true, of my own knowledge. General Sandford gave public notice to all concerned of his willingness to investigate any contract, and his readiness to do ample justice in every case. He invited all persons, whether concerned or not, to make full and free disclosures of any frauds which were known to have been perpetrated. He invited the Indians to come forward and complain if any had been injured. He disseminated the information amongst the Indians as far as possible, and his message to the above effect was delivered to them in two public councils. I reside near the bridge, and was in the daily habit of crossing and re-crossing, and do know that not the slightest effort was made to prevent the free and safe ingress and egress of any Indian to the town of Columbus; and, in fact, hundreds did really pass and repass daily, as they were in the habit of doing. I know of no instance in which an Indian was by fraud, force, or in any manner prevented from approaching the agent. I have heard of no instance, and do not believe that any such exists.

As to the alleged frauds, I will not say that none were committed, but I do say that, in regard to those certificates particularly complained of, either Benjamin Marshall or myself, in almost every instance, acted as interpreter; and I know no case of frauds myself, and am very generally acquainted with the Indians who were certified.

The protracted course pursued in the land business is exercising, and will continue to exercise, a pernicious influence over the emigration; for the Indians generally indulge the hope that they will get back their lands, or be paid more money; and whilst this hope exists, they will not emigrate. There are not wanting white men to impress this upon the minds of the Indians, and hundreds who are generally and well known to have sold their lands long ago are now refusing to emigrate, under the delusive hope of getting back their lands. The situation of the Indians is daily becoming worse, and nothing can save them from total ruin but a speedy emigration. I therefore feel it a solemn duty to my unfortunate countrymen, respectfully but firmly to urge upon the government a speedy disposition of the land controversy, that the Indians may at once know their true situation, and be prepared to act accordingly.

Delay is the worst thing that can now happen to the Indian. So long as the Indians remain and are tampered with by the interested white men, so long will they be dissatisfied with the disposition of their lands, and with all that the government can do in regard to them; but they will at once submit to whatever may be done by the government, so that it be prompt and final.

PADDY CARR.

To the Hon. SECRETARY OF WAR.

R.

COLUMBUS, GEORGIA, October 16, 1835.

SIR: The undersigned beg leave respectfully, but frankly, to address you upon a subject of deep interest to themselves personally, and of some interest to the community in which we live.

Soon after the last treaty was made and ratified between the Creek Indians and the United States, the lands surveyed, and the location of the reserves made, the undersigned, in common with hundreds of other citizens of Georgia and Alabama, embarked in the purchase of lands from the Indian reservees, and, in doing so, they conformed in all respects to the provisions of the treaty, and the instructions of the government to its agents. The undersigned met little or no difficulty until about the first of February last, when the Indians, with a view to emigration during the ensuing spring and summer, became generally anxious to sell their lands, and an unusual number of contracts were made and certified in due form. Owing to the fact that a large proportion of those contracts fell into the hands of certain persons and companies, to the exclusion of others, hostility to the purchasers was excited, and complaints made to the department that a considerable number of *those* contracts were fraudulent. What was the precise nature of the complaints, or by whom made, the undersigned do not know: they are informed, however, that no particular purchaser has been accused, no particular contract impeached, and that no Indian has made any complaint. The charge seems to be particularly general and sweeping in its character and terms—that most of the contracts are *believed* to be fraudulent, since a particular date. Had the charge been so specific as to present an issue, the undersigned would have met it long since, had it applied to them; but, being so general and loose, neither designating persons, time, place, nor circumstance, they believed the government could not regard or act upon it; but in this they were disappointed. After General Sandford had ceased to act as certifying agent, and after the above complaints had been submitted to the department, he was instructed to return to his post and investigate all impeached contracts. The undersigned, relying upon the justice of their cause, and believing that the matter would be urged to a *speedy* and *final* conclusion, submitted without a murmur to the course pursued. General Sandford, in pursuance of his duty, issued his printed handbills, notifying all persons concerned of the time and place when and where he would commence his investigations, and inviting all persons, concerned or not, to come forward and make full and free disclosures of any known fraud. The same information was disseminated among the Indians as extensively as possible, and delivered to them on two separate occasions in open council. How long the agent remained at his post, and what complaints, and of what nature, you have no doubt been officially informed. The undersigned did hope that at this point the controversy would end, and that their contracts would have been submitted to and approved by the President; and they do now most earnestly protest against any further delay of their rights, or attempt at investigation, at least until a charge more specific and regular shall be made, so that each contract may stand or fall upon its own merits. The undersigned pray you to remember that they have once been cited to appear before the government examining agent to defend their rights; that they did appear,

and were ready to meet any issue that might be presented; and that none was presented. They also pray you to remember that, since that time, important witnesses have removed to other sections of the country, and they have no legal means of obtaining their testimony. They never have objected to giving a reasonable time for complaints to be made, and sustained, if possible; but they believe that a much more than a reasonable time has already been given, and that all further delay, and all further trouble and expense, to which they may be exposed, is vexatious and oppressive. The undersigned are informed, that, upon the reception of General Sandford's final report, all contracts which had been certified by him were about to be submitted to the President for his approval, and would have been submitted and approved but for the reception of a communication to the department, purporting to have been written by the two principal chiefs of the Lower Creek nation. What was the particular character of that communication, the undersigned do not know; but they have been informed that it contained, substantially, a charge of collusion between General Sandford and the purchasers; that although the agent professed to offer an opportunity for investigation, yet that he intrenched himself within the limits of this town; and that the purchasers, by force, fraud, and menace, prevented the Indians from crossing the bridge and coming to the agent's office. This letter the undersigned allege, and will, if necessary, prove, never originated with the Indians, but was suggested and forged by two interested white men, who, as we verily believe, bribed the Indians to pursue that course. The letter we pronounce to be *basely false and slanderous*. It is true that General Sandford did remain in this town, and it is also true that at the same place had all his business been transacted, and we humbly conceive it was and is the proper place for all investigations to be had. It is *not true* that the Indians were, by fraud, menace, or force, prevented from crossing the bridge, or visiting the agent's office; on the contrary, the bridge was open and free for them to pass, and hundreds actually did pass daily, as they were previously and subsequently in the habit of doing, without molestation or expense. This communication, the undersigned are informed, led to the appointment of a new investigating agent, (Col. Hogan,) with whose instructions they were wholly unacquainted. Against this appointment, or at least his right to investigate any of the contracts certified by General Sandford, the undersigned do protest, at least until it shall be ascertained from a previous inquiry that the communication aforesaid was true in fact, and that the Indians have had no chance of making their complaints, if any existed. The undersigned have said, and they repeat, that they are wholly uninformed as to the instructions of Col. Hogan; but they are informed that he claims the right to investigate *all* contracts, whether approved or not, and for all manner of causes; and that he proposes to receive as evidence the statements of Indians, and to hold his sessions in the Indian towns, in the interior of the nation. Against this course the undersigned do solemnly protest; they hold that, at least in regard to approved contracts, they can be impeached in no other way than by a judicial procedure, when the parties will be entitled to a trial by jury, and when they can decree according to the justness of the case. Thousands of innocent persons have purchased and paid for their lands, built their houses and opened plantations; and if those titles are thus to be assailed, a scene of confusion and ruin will ensue discreditable to the government,

and too intolerable to be borne. These titles rest upon the provisions of the treaty, the act of the government agent, and the solemn approval of the President; and if they are all a farce, all confidence in the government is justly forfeited. By the laws of the States of Alabama and Georgia, even Indian *testimony* is inadmissible. The undersigned beg leave to inquire how, or by what authority, are their rights to be affected within the limits of either of those States by the *statements* of Indians, when, by the laws of these States, and whose validity none will dispute, even Indian evidence is illegal and inadmissible. The undersigned claim no special exemption, but they do claim the benefit of those laws applicable to all cases and all persons within these States. They wish it to be understood that this is no technical objection, but that its foundation is laid, not only in the law, but in justice and experience. With those well acquainted with the Creek Indians in their present degraded and fallen state, it will be universally admitted that no confidence can be placed in their veracity, especially when their interest is at stake. As conclusive evidence of this, we need only refer to the communication from the *two principal chiefs* of the Lower Creeks to yourself, above mentioned. They were tampered with by white men, and have not hesitated to state to you, in *writing*, a string of palpable falsehoods. If a more pertinent instance be wanting, one of those very chiefs (Epha-Emarthla) has complained to Col. Hogan that his land had not been sold by himself, and requesting that, when the case was gone into, a particular negro should interpret, who would say that he had not sold; and by no means to permit Carr to interpret, for he would say that he had sold. Now, in regard to this man, it is susceptible of proof from several of our most respectable citizens that *he did* sell, and was in *person certified*. Hundreds of similar cases might, if necessary, be cited. The undersigned pray that the evidence of such persons, much less their statements, may not be received against their own oaths, the attestation of the deeds, and the certificate of the government's own agent. If further investigation is to be had, the undersigned protest against its being had at any other place than where the contracts were made. It is known to you that travelling is not entirely safe in some parts of this nation, and we believe that men who are able and willing to influence the Indians to write you palpable falsehoods, would be able and willing to influence them to render exceedingly hazardous the travelling of their opponents through the interior of the nation. Moreover, it will be remembered that purchasers have no legal means whereby to coerce the attendance of their witnesses before the agent at any place of his appointment, and it is not likely that witnesses would voluntarily incur the danger and privation incident to such travelling. The undersigned now here state distinctly, that if this mode of procedure is persevered in, they cannot, and will not, incur the hazard, and must leave the agent to pursue his own course and one-sided investigation.

In regard to the alleged frauds, the undersigned beg leave to say, that in every instance the agent inquired most particularly as to the identity of the Indian, his willingness to sell, the price to be paid, and the fairness of the contract; and in every instance where there was the least uncertainty, his certificate was withheld. During the time of passing the contracts complained of, either Benjamin Marshall or Paddy Carr, in almost every instance, acted as interpreter for the agent. Those men are very intelligent, and are, also, very generally acquainted with the Lower

Creek Indians. Now, we ask if it is reasonable to suppose that it was possible, in the nature of things, that many wrong Indians could have been palmed upon both agent and interpreter?

In conclusion, the undersigned beg leave to recapitulate, that, long since, they made many purchases of Indian reserves; that they paid their money; that evidence of all this is now before the department, and is attested by the government's own agent; that, up to this time, no contract has been impeached; that time and opportunity have been given for complaints, and none yet made; that many contracts were made long before the time at which it is alledged the frauds commenced, against which not a word has been uttered, and which are also withheld. Now, we do respectfully and earnestly urge that our contracts be forthwith submitted to the President for his approval; and, in default thereof, we shall feel that justice has been withheld from us, and that, upon every principle of fairness, the government will be bound to make good any loss that may accrue to us.

Respectfully, your obedient servants,

ELI S. SHORTER,
SHORTER & SCOTT,
SHORTER, TARVER, & Co.,
J. A. HUDSON,
HUDSON & FONTAIN,
HUDSON & McDOUGALL,
ALEXANDER J. ROBESON & Co.,
WELLBORN & ROBISON,
LUTHER BLAKE,
BLAKE & CARR,
G. W. DELLINGHAM & Co.,
J. J. FANNIN & Co.,
JOHN D. HOWELL & Co.,
McDOUGALD, HOWELL, & Co.,
J. W. WOODLAND,
PEABODY & WOODLAND,
POWELL & WATSON,
DANIEL McDOUGALD,
By his attorney, John Peabody,
McDOUGALD & MILLS,
N. B. POWELL & Co.,
T. J. WORSHAM,
WORSHAM & CALHOON,
WILLIAM ELLIS.

To the Hon. SECRETARY OF WAR.

S.

CREEK NATION, ALABAMA,
November 16, 1835.

To the Hon. LEWIS CASS,
Secretary of War:

SIR: We, the undersigned, principal chiefs of the Lower Creek Indians, some months ago addressed a letter to you, containing, as we now

understand and are informed, matters with which we were then unacquainted, and producing results which we did not expect. We, you know, are unacquainted with your language, and can neither speak nor write it ourselves, nor can we understand it when spoken or written to us by others. That letter did not originate with us, or with the Indians. We should never have thought of it had it not been suggested to and urged upon us by two white men, who professed to be our friends and the friends of our people, and who assured us that the letter would greatly benefit us and our people. Under this impression, and without knowing or understanding what were the contents of the letter, we signed it.

We are now informed that the letter contained a complaint, in substance, that the investigating agent, General Sandford, had not given our people a fair chance to complain of frauds in the sale of their lands; and that the white men had, by fraud, force, and threats, prevented our people from going before the agent to make their complaints. If the letter contains any such statement as this, we wish the letter to be considered as never having been written, for it is not true. Our people well knew that the agent was ready to hear them; there was no difficulty in their making their complaints, if they had any to make; but we know of no frauds ourselves, and we have heard of none from our people, only as they have been prompted to make them by interested white men. We believe it best to stop all further investigations; for some of our people, who are known to have sold their lands, are ready, under the influence of white men, to deny selling; and we believe many of our people, in this way, are about to get into trouble.

NE-HA MICCO,	his ✕ mark.
HOTULGE TUSTUN-MUGGA,	his ✕ mark.
E FIE MARTHLAR,	his ✕ mark.
TOMMY MICCO,	his ✕ mark.
TUCKABATCH-FIXICO,	his ✕ mark.

Done in presence of—

WILLIAM RIVES,
SAMUEL R. ALLSTON,
LUTHER BLAKE,
PADDY CARR, *Interpreter.*

T.

STATE OF ALABAMA:

Interrogatories to be exhibited to Paddy Carr, whose testimony is deemed material for the purchasers of Indian reserves, under the last treaty made with the Creek Indians, upon the trial of certain imputations of fraud, made at the Department of War.

1st. Who was the usual and general interpreter for General Sandford, in the sale and certification of Indian reservations, about the 1st of February last, for some time previous, and up to the close of the business? In case of his absence, were you in the habit of acting as interpreter? and, during that time, did any other person act in the same capacity?

2d. Are you very generally acquainted with the Lower Creek Indians, whose business was transacted in General Sandford's office? Do you know of any fraud that was practised by the substitution of a wrong Indian? If you had detected any such attempt, would it not have been your duty, and would you not have performed that duty, to disclose the matter to the agent?

3d. In every certification which you witnessed, say whether yourself and the agent did not very closely and particularly examine the Indian selling, touching his identity? and state what was the nature of those examinations.

4th. During the time General Sandford kept his office open in Columbus, for investigations, say if you did not reside on the Alabama side of the river? whether you did not daily cross and recross the bridge? whether large numbers of Indians, during that time, did not cross and recross as usual, without let or hinderance? and say if you know of any attempt, by force or menace, to prevent any Indian from crossing, or approaching the agent's office, to make complaint if any existed? If so, state who was the person, and what means did he use?

ELI S. SHORTER,
For self and other purchasers.

GEORGIA, *Muscogee County*:

Answers of Paddy Carr to the annexed interrogatories.

1st. Benjamin Marshall was the usual interpreter for General Sandford; I sometimes acted in his absence. I know of no others.

2d. I am as well, and perhaps better acquainted, than any other person in the nation. I know of no fraud that was practised. In a few cases during the certification, Indians did present themselves who were not the proper owners of the land; but, from the strict examination by the agent, they were always detected and severely reprimanded. It would have been my duty as an interpreter, and I certainly would have performed it.

3d. It was the constant rule of the agent to examine the Indian selling, as to his identity, by asking the name he gave in to the enrolling agent, the town he gave in at, the town he belonged to, and the name of the chief. The agent would then inquire of the Indians present if they knew the one then before him, and if what he had stated were facts; then to whom he had sold, when the sale was made, and how much he was to get; explained to the Indian the nature of a sale, and strictly charged him to take care of his money, and not suffer the white people to cheat him out of it.

4th. I did reside on the Alabama side of the river, and was in the habit of almost daily crossing and recrossing; numbers of Indians were daily doing the same without the least hinderance. I never heard there was a charge of that kind until a long time after General Sandford had ceased certifying.

PADDY CARR.

The above foregoing answers were this day sworn to and subscribed before me, November 23, 1835.

ALFRED IVERSON, J. S. C. C. C.

U.

STATE OF ALABAMA:

Interrogatories to be exhibited to Benjamin Marshall, whose testimony is deemed material for the purchasers of land under the last treaty with the Creek Indians, and in regard to which fraud has been imputed, the said wilness being on the eve of removing from said State.

1. Did you generally act as interpreter for General Sandford in the sale and certification of Indian reserves, about the first of February last, for some time before, and up to the close of the business? If any one else during that time acted occasionally as interpreter, say who that person was.

2. Are you very generally acquainted with the Indians in the Lower Creek nation, and those whose business was done in General Sandford's office? If so, say whether you know of any fraud which was committed by substituting a wrong Indian?

3. Had you detected any such fraud, was it not your duty to disclose it? Did not the agent request you to do so? and would you not have done it?

4. When the agent was instructed to investigate alleged frauds, what notice thereof did he give to the parties concerned, and to the community at large? And how was that notice communicated to the Indians, and promulgated amongst them?

5. Did you not reside on the Alabama side of the river during the time the agent kept his office open for investigation in Columbus? Were you not daily in the habit of crossing and recrossing the bridge? Did not large numbers of Indians during that time cross and recross as usual, free from molestation or hinderance? Do you know of any force or menace used to prevent any Indians from crossing, or approaching the agent's office, to make complaints, if any they had? If so, state who the person was, and what means were used.

JOHN D. HOWELL,
For self and other purchasers.

THE STATE OF GEORGIA, }
Muscogee county. }

Depositions of Benjamin Marshall, taken before me, Alfred Iverson, judge of the superior court of the Chattahoochee circuit, in the State aforesaid, at Columbus, in the county aforesaid, this 17th day of November, A. D. 1835.

The said Benjamin Marshall, after being duly sworn true answers to make to the interrogatories hereunto annexed, deposes and answers as follows, that is to say: To 1st interrogatory he answers: I did act as interpreter between General Sandford and the Indians, from the month of February, 1834, up to March, 1835. I was absent three or four times during that period, but did not stay away more than a week at either of the times. I am not able to state who acted as interpreter during my absence.

To the 2d interrogatory he answers: I am generally acquainted with the Indians in the Lower Creek nation, except the Enchees and Lower

Ufaulas, and I have no knowledge of any case certified when I acted as interpreter, in which the wrong Indian was substituted. I was present when a large number of the Lower Ufaulas were certified, and remember their chief, Yilker Hadjo, was present whilst the contracts were certifying, and was called upon by General Sandford, in every instance, to say whether the Indian of his town, that was produced, was the true holder of the location.

To the 3d interrogatory he answers: I did consider it my duty to disclose fraud in all cases that came within my knowledge, and I was so instructed by General Sandford. There were several cases in which I did make known to General Sandford that the Indian produced was not the right one, and thereby prevented the contract from being certified.

To the 4th interrogatory he answers: When the investigation commenced, General Sandford issued a written notice to the purchaser on those few cases in which complaints were lodged; and before the investigation commenced, notice was given by printed notices, stuck up at public places, and also in the newspapers published at Columbus. Notice was given to the Indians, by informing the chiefs, who were instructed to give notice to the people of their towns. I gave notice to the Indians myself at two councils, one of which was held at the residence of Ne-ah micco, the other at Fort Mitchell.

To the 5th interrogatory he answers: I did reside on the Alabama side of the river, opposite Columbus, during the time the investigation was going on. I was in the habit of crossing the river daily by the bridge, during that time, and saw large companies of Indians crossing and recrossing, and never saw any attempt, either by force or otherwise, to prevent said Indians from crossing and making their complaints.

B. MARSHALL.

Answered, subscribed, and sworn to, before me, this 17th November, 1835.

ALFRED IVERSON, J. S. C. C. C.

V.

CREEK INDIANS.

Substance of a "talk" between his excellency Clement C. Clay, Governor of the State of Alabama, and Ho-poe-thle-Yoholo, chief of the Creek nation, in the presence of the following officers: Major Gen. Patterson, Colonels John B. Hogan, John A. Campbell, Albert J. Pickett, and James E. Belser, Judge Benson, Majors T. J. Abbott and Donegan, and other gentlemen, together with the following chiefs of Tuckabatchee town: Young King, Little Doctor, Yarja, Sich-e-Colonels, Mad Blue, Mad Deer, Osooch-Fixico, and others, on the 30th May, 1836.

Ho-poe-thle-Yoholo said, at the city of Washington, in the winter of 1832, he saw and conversed with the President of the United States, General Andrew Jackson. The President there informed him, after the making of their treaty, that, by the terms of it, at the expiration of five years from the date of its conclusion, if his people, the Creeks, continued to reside

where they then were, they must necessarily become subject to the jurisdiction of the State of Alabama, and be governed by its laws; otherwise, they must move beyond the bounds of the Mississippi, and settle themselves in a new home; which course he thought would be most beneficial for them.

Before the expiration of this term of five years, however, the whites had come in, in great numbers, among them, and thenceforward there had been much trouble and confusion. In consequence of this state of things, he had in the mean time, in accordance with the counsel of friends, gone to look for a home beyond the Mississippi. During his absence greater troubles had grown up, and more confusion among his people arisen, on account of the transfer and sale of their reservations, for on his return he found that the whites were swindling them out of them; on that account he had requested Dr. McHenry, at that time certifying agent, to forbear from certifying to contracts for the sale of them, for he had discovered that it was no uncommon thing for one Indian to be instigated to assume the name of and personate another, and sometimes to sell and stand up to be certified to several tracts of land, of not one of which he was in reality the owner. He had written to the President on this subject; he had asked for an investigation, and desired inquiry to be made into it; he had also, in order to prevent a repetition of such conduct, requested the President not to permit of certifying to contracts except in the presence of discreet chiefs; and was much gratified to find that, latterly, that course had been adopted.

The land speculators, in order to get the Indians' reservations of land, would harden the people against the counsel of the chiefs, and sell to the Indians pistols and powder, knives and lead; would give bad counsel to them, and say to them, If the chiefs attempt to restrain or interfere with you, kill them; and that in this way the late depredations and disturbances that had so suddenly and in so unlooked-for a manner broken out in the nation had been created and produced.

At the time of the meeting, that had been appointed to take place at Dr. McHenry's, for the holding of the investigation asked for concerning the frauds that had been committed upon the Indians in the sale of their lands, he was himself sick and unable to attend, but sent word that the chiefs generally, who for the most part were apprized of the affairs of their people, and therefore knowing who among them had actually sold, and who not, could assist in making a proper report of them. Tuskehenehaw, of Tuckabatchee, was present at this meeting, hiding about in the bushes; and Gen. Woodward and Capt. Walker were also there, putting it into Tuskehenehaw's head to make the Indians believe that those among them who went before the agent to make complaint about the fraudulent sale of their lands would be the very persons who would be taken and sent immediately off to Arkansas.

Walker and Woodward were, furthermore, at the same time making papers also out in the bushes, for the Indians there, telling them that what the agent might do for them would be of no account, but that the papers they were making for them would secure them.

By their treaty, made with the President, it remained with their people, after the expiration of the five years, either to stay upon their lands under the law of the State, or remove westward to a new home; in either event, he had been anxious for the people to be allowed the benefit of what was rightfully their own, and to this end the investigation was desired by him, and it had been his earnest hope that it would have effected it. He had often-

times attempted to procure a general meeting of the tribe of Tallassee, having a desire to talk with them, but was as often foiled, they appearing to have an idea of what he wished to converse about; and being, also, more immediately under the influence of Tus-ke-he-ne-haw, anxious to avoid it. An opportunity being at length afforded, he appeared unexpectedly at their meeting, and finding Tus-ke-he-ne-haw with them, remonstrated with him about the evil course he was pursuing, telling him that the pernicious talks he was making to the Indians were not his own talks, and did not originate with him, but were derived from others, of whom he was the dupe; and that if he thus obstinately persevered in such course, it must necessarily end in consequences that would be ruinous, and that all would be afflicted with sorrow for Tus-ke-he-ne-haw; he, notwithstanding, continued stubborn, and afterwards proceeded in the same way he had begun, disregarding his friendly remonstrance; and the events which he had so much feared, on account of it, had unhappily, of late, become realized. Flying rumors of contemplated disturbances had occasionally passed amongst his people, but they were considered by them as unworthy of their belief; they did not open their ears to them. Now, indeed, the astounding facts had broken out upon them. He had received information of a matter which he had been unable properly to comprehend: it was concerning a paper, or letter, said or pretended to have been sent from people beyond the seas; this, it was said, had been circulated in some of the Indian towns; he had heard that it had been sent to Kun-char-te-Micco, to Ene-har-mar-th-looche, to Neah-Micco, and that Tus-ke-he-ne-haw had also received it; he was informed that runners had come from Neha-Micco to Tus-ke-he-ne-haw, bringing four broken sticks to him, and word that they were ready; and it appeared that it was about the time of the last of these broken sticks that hostilities had commenced among them.*

The circumstance of the paper said to have been circulated, he could not, as he had before said, well understand; it could not have been the work of Indians, for they cannot read or write; the only way in which he can account for it is, that white people must have been at the bottom of it. His people had agreed with Colonel Hogan, the superintendent and agent, that they would emigrate with him during the present spring; some of them, however, had been desirous of making a crop first, and putting off going until the fall afterwards. This had been suggested to Colonel Hogan, but he would not listen to it, and said they must not defer the time of their removing beyond the spring; that the grass would be sufficiently grown then to feed their ponies upon; they must be prepared to start by that time; it would be the best season for them, and they ought to avail themselves of the advantage of it, and be off; that, to

* NOTE IN HOGAN'S HANDWRITING.

The paper alluded to by Opoth-le-Yoholo in the talk was ascertained to be some old proclamation issued during the last war with England by Sir George Cockburn, commanding the English fleet, and was highly inflammatory, and addressed to the Creek Indians, and was, no doubt, the cause, at that time, of exciting them to make war on the whites. Where those old proclamations could have been lying all this time, is not yet discovered; but an Englishman, who is a silversmith, and resided for some time in Columbus, Georgia, was the man who rode among the Indians, and read and explained those papers, but took care to conceal the date; he is now in prison in Montgomery jail. This man says he is the natural son of Francis the Prophet, hung by order of General Jackson, and was born in London at the time Francis visited England.

facilitate their removal, he had promised to interest himself in the procuring, if possible, the payment of their annuity for the present year, by that time; but although, as they had been informed, he had endeavored to do so, he had not been successful—no law having been passed authorizing and appropriating it. The time contemplated for their removal had also passed; the people, in expectation of it, had not planted, and were already in a state of great want on account of it; they were, generally, both willing and desirous of emigrating, and would go into camp if the opportunity were afforded them; that, owing to that diversity of sentiment ever entertained by men in regard to the propriety of particular measures, it was not to be expected that all would be unanimous in the matter, but he thought that those who had hitherto said they would not go, might, by possibility, be influenced by the example of the others going into camp, if camps were opened for them; and although some of this mind might be reluctant, yet he did not think they were spoiled—that is, that their repugnance to emigrating was invincible; but might, by such means, be overcome.

He wished to make particular remarks on one subject, which deeply affected their condition as a people, and interests: it was in regard to the quantity of ardent spirits that was continually introduced among them; beyond doubt, it was one of the leading causes of their debasement and misery, and tended infinitely to the creation of mischief and disturbance. He was desirous, in the event of their going into camp, that the dealers in the commodity might not be allowed to bring or sell it among them; in the absence of the cause, they would, of course, be relieved from the baneful and destructive effect. Another subject, too, he would also invite attention towards. Claims were not unfrequently set up by their white brethren against the Indians; these too often were founded neither in truth nor justice; often where not a cent was due on account of them. To satisfy such demands, their horses were sometimes seized upon—sometimes their money: this, too, arbitrarily and without sanction of law; at other times, they were threatened with the consequences of the law, or the confinement of a jail, and in such manner their substance was extorted out of them. Oak-fus-ke-Yoholo, the prisoner lately killed in Tal-lassee, while attempting to effect his escape, he had every reason to believe had been excited to anger and made mad by some circumstance of this kind.

To proceedings so arbitrary, and the introducing and selling such floods of liquor among them, he thought a stop should be put. They could then, in more order and quiet, complete their necessary arrangements for going away.

When the late hostilities broke out, his people were engaged in gathering up their cattle that were dispersed in the woods, in order to dispose of them, in expectation of their departure. They had not finished this gathering when news of the hostilities reached them; nevertheless they immediately quit hunting their cattle, and hastened to the relief of their white friends; nor did they cease from aiding them until, by their exertions, most of the deluded and guilty depredators upon the lives and property of the whites in that section of country had been either made prisoners, and turned over to the custody of the whites, or expelled the neighborhood, through fear, to places remote and unknown to them, and where,

as was supposed, the main body of their enemies had secreted themselves and absconded.

Hopoethleyoholo being here asked by the governor, whether he would be willing to continue to lend his useful aid to the commanding general (Patterson) then present at the interview, answered: Neah-Micco and Tuskehenehaw are responsible for the influence of the evil counsels they have been instrumental in disseminating among the red people; by their conduct they have become deeply involved in the creating of the present passing events; have been actors in them; and ought, therefore, to be chargeable with some of the troubles and burdens of allaying them. He thought it was in the full power of these, by proper exertion, to cause the apprehension and delivery of the murderers and other depredators who had been concerned in the late rash and lamentable outbreak upon their white brethren of the Creek nation. This exertion ought to be first required and demanded of them; after which, if they turned a deaf ear and refused, and the general called upon them, although the horses belonging to his people were much worsted by the fatigues of their late service and enterprise, they would again, nevertheless, cheerfully turn out to his assistance, and help to subdue and take them.

Reverting to the subject of their removal beyond the Mississippi, Hopoethleyoholo said Captain Walker, one of the company of the contractors who had engaged with the government to emigrate them, had conversed, some time back, with him about their emigration, and had offered to open camps for them to assemble in, upon condition that they should only remain in camp one week prior to the commencement of their journey, saying that he could not keep them in camp, and feed and furnish provisions for them, longer than that space; that his people would not agree to go into camp upon such conditions; the time limited to them was too short to make their needful preparations in, therefore they were unwilling to agree to it. Lately, Captain Walker had again made his people similar proposals; but, as before, they could come to no other understanding about it. On that occasion, Colonel Hogan being absent, they had obtained an interview with Captain Page; at this interview mention was made to him about the state of their land matters, which, although investigations had already been had about them, it appeared, by the order of the government, were to be had over again. Captain Page, on that occasion, had said to him that there were so many agents sent by the government amongst them to hold investigations about the stolen lands they made complaint of, and for other purposes, that he did not think it was going to do them any good; they would be kept by them until fall before their business would be settled; that his people, therefore, had better sell their claims to these controverted lands for whatsoever they were able, even though they might not be able to get the worth of them; they had best get something; something was better than nothing. Then a man, with whom, at the time, he was unacquainted, of middling height and rather thick, came up and accosted him, saying he had heard what had been said in the matter of their land claims by Captain Page, and, if he liked the talk, and would sell him the claims, he would buy them, doubtful as might be the chance of their recovery; nevertheless, he said, in the event of their selling to him, that he would incur the risk of this. Here Captain Walker, who was then present, interfered, and counselled his people to agree to this proposal, and sell their claims as was desired;

and it was at this period that he made his second offer, as last mentioned, to open camps for emigration.

Being asked what towns he thought were now willing to emigrate, he replied the town of Tuckabatchee, for the most part; these were his people; they were, in general, willing, except those about Tuskehenehaw; and under his influence, these objected. The other towns, so far as he could learn, were those of Otthissee, Clewalla, Tuskegee, Coosawda, Kiilige, Hatchechubbee, Autauga, Towarsa, part of Ufaula on Tallapoosa, Hickory Grounds, Little Oakchoy, Wewoakkar Wockoy, Pockentallahassee, Weogufka, Hillabee, part of Fish Pond, and part of Talladega.

Hopoethleyoholo added, in conclusion, that some of the Creeks had passed over among the Cherokees; they were composed principally of Sockapartoy, Kunchartee, Tallasseehatchee, and a portion of Talladega.

W.

EXECUTIVE DEPARTMENT, TUSCALOOSA,
February 22, 1834.

SIR: I have the honor to transmit, for the consideration of the President, a copy of an act of the General Assembly of this State, which, you will perceive, was passed with the design of affording protection to the Indians in the reservations granted them by the treaty of March, 1832; and I may add, with the expectation that its provisions would be deemed by him sufficient for the attainment of this object. It evinces a regard for these people by the authorities of Alabama, and a determination to protect them in all their rights, which will assure the President that the employment of military force hereafter will be unnecessary.

I repeat what I have stated heretofore, that the body of the settlers are opposed to aggressions upon the Indians; and, if called upon to act as jurors, will not hesitate, as far as their agency may be concerned, to carry into effect the intention of the legislature, by inflicting the penalties of the law upon all who may be reckless enough to violate it. This being the case, few, if any, instances of intrusion will occur; the Indians will be as secure in their possessions as our white citizens; and it cannot be doubted that the treaty will be as faithfully, and more effectually, executed than it possibly can be by a detachment of armed soldiers.

Alabama having rightfully acquired exclusive jurisdiction, previous to the ratification of the treaty, over the subjects embraced by the fifth article thereof, cannot be deprived of it without her consent. But, however this may be, whatever the power of the general government, or the right of the State in this matter, it appears to me that the novelty of the spectacle of keeping upon the borders of a State a standing army to awe its citizens into submission to the laws, and the obvious departure which it indicates from the customary modes provided by the constitution for conducting the operations of the government, are considerations of themselves sufficient to induce a resort to milder means—to means that are more compatible with the genius of the government, and the spirit of our institutions; that are more agreeable to the habits of our people, and less offensive to that American pride which delights in yielding obedience to the civil tribunals

of the country, but is reluctant to submit to the restraints of military coercion.

The act of 1807 cannot be executed in this State without violating many of its laws, the oldest in our statute-book, which the duty of our officers binds them faithfully to administer. Collisions, therefore, such as the President should be, and I am sure is, among the last to desire, will unavoidably take place, if he adheres to the determination to employ military force.

I sincerely wish to avoid this state of things, and it is to that end that the proposition is made to confide to our laws, particularly the one enclosed, the protection of the Indians and the execution of the treaty. I shall be greatly obliged by being informed of the decision of the President, as soon as your convenience will allow you to communicate it.

I have the honor to be, sir, very respectfully, your obedient servant,

JOHN GAYLE.

HON. LEWIS CASS,
Secretary of War.



AN ACT for the punishment of certain offences committed upon the territory ceded by the Creek tribe of Indians to the United States of America.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, if any person or persons whomsoever shall forcibly or peaceably enter upon, or take possession of, any tract or tracts of land within this State, and within that portion of territory ceded by the Creek tribe of Indians, by the provisions of the Creek treaty of the 24th March, 1832, to the United States of America, and which, according to the provisions thereof, are set apart and are to be distinguished as Indian selections and reservations, without having previously made a contract with the person or persons entitled to the possession of such selections or reservations of land, according to the provisions and requisitions of said treaty, the person or persons so offending shall be proceeded against by indictment in the circuit court of the county in which such Indian selection or reservation may be, and, upon conviction thereof, shall be sentenced by said court to pay a fine not exceeding one thousand dollars, nor less than two hundred and fifty dollars, to go to the use of the county in which such case or cases may be tried; and upon his, her, or their failure or inability to comply with such sentences, he, she, or they shall be committed to the common jail of the county in which such conviction may be had, there to remain without bail or mainprise, and shall not be discharged therefrom until the end and expiration of three calendar months from the time of such commitment, unless the sentence of the said court shall, in the interim, be complied with: and upon every conviction it shall be the duty of the court, before whom the same may be had, to order and direct the sheriff of the proper county to put the person or persons entitled to any such selections or reservations of land so trespassed upon as aforesaid into the immediate possession of the same.

SECTION 2. *And be it further enacted,* That it shall hereafter be the duty of the presiding judge of the circuit courts of the counties of Bar-

bour, Macon, Russell, Chambers, Tallapoosa, Coosa, Randolph, Talladega, and Benton, at each and every term of the said circuit courts, to give this act specially in charge to the respective grand juries thereof.

SAMUEL W. OLIVER,

Speaker of the House of Representatives.

JOHN ERWIN,

President of the Senate.

Approved 18th January, 1834.

X.

EXECUTIVE DEPARTMENT, GEORGIA,

Milledgeville, February 5, 1834.

SIR: It has been with some degree of surprise that I have, for several months past, been receiving communications from the citizens of Irwin, and other adjoining counties in this State, complaining of the lawless depredations of a large number of strolling, vagabond Indians, belonging to the remnant tribe of the Creeks, who yet remain in the State of Alabama. The present possessions of these Indians do not approach within fifty miles of any part of the county of Irwin; the intervening country, however, from the Indian settlements to the county of Irwin, is but very thinly populated by the whites, being chiefly a poor pine barren, interspersed with extensive swamps, which are rarely penetrated by civilized men, and therefore afford a hiding-place and refuge for wild beasts and more savage men.

These Indians have, in considerable numbers, taken up their abode in this section of the State, and have done immense damage to the peaceable citizens who have settled in that part of the country, by killing their cattle and hogs, and stealing and consuming their corn, potatoes, &c.; they are sufficiently strong in numbers to bid defiance to the thinly settled population. Attempts have been made, under my instructions, to apprehend and bring to justice this lawless band of robbers; but whenever a force sufficiently formidable presents itself, the Indians immediately take refuge in the swamps, and evade apprehension and further pursuit.

I would not trouble you with this subject, if I were not at a loss to correct this evil, without resort to a remedy which, from every consideration and every feeling of my nature, I am anxious, if possible, to avoid. I am convinced that I have no means at my control to bring to an issue these insufferable depredations but by exterminating, in the most summary way, this miserable band of robbers. My object, therefore, in communicating to you directly on this subject is, to suggest to you that it has occurred to me that some direct instructions or order from you to the principal men amongst the Creeks, through such agent or agents as you may deem best (perhaps to the commandant of the United States troops now stationed on the western borders of Georgia,) might be most effectual, as well as the most peaceable method of suppressing and ending this insufferable difficulty. It is certain that the evils complained of cannot be much longer borne with. If you cannot control these Indians through some agency,

the authorities of Georgia will be under the painful necessity of exterminating the evil in the only practicable way.

I have the honor to be, with great respect, your obedient servant,
WILSON LUMPKIN.

Hon. LEWIS CASS,
Secretary of War.

Y.

EXECUTIVE DEPARTMENT, GEORGIA,
Milledgeville, October 7, 1836.

GENTLEMEN: I have the honor to acknowledge the receipt of your letter of the 3d instant, in which you request me to communicate to you, as commissioners on the part of the United States to inquire into the causes of the recent Creek hostilities, such information as I may have, and which may be communicated consistently with my ideas of propriety and public duty, in regard to the causes of these hostilities; the time when the aspect of things on the Chattahoochee became alarming; the time when the means of meeting reasonable anticipation of danger to the white population of Alabama and Georgia were resorted to by the State and general governments, and what those means were.

Of the causes which led to the Creek war I know nothing, and can, therefore, only give you my opinion, with the reasons upon which it is founded.

The great majority of the Creek Indians are idle, dissolute vagrants, many of whom had, for a long time, been subsisting on provisions stolen, mostly from the people of Georgia living on and near the Chattahoochee. They were in the daily practice of crossing the river, stealing cattle, horses, hogs, corn, and such other articles as they wanted. If the people thus robbed objected or attempted to resist or punish them, they would add murder to their other crimes. Many of them were in a state of starvation, and had no means of obtaining subsistence, except by depredations on the property of the white people. In the prosecution of their unlawful purpose they were sometimes detected, and, in the conflicts which ensued, some of each party were occasionally killed. A state of bad feeling was the consequence on both sides, and with the Creeks ripened into a determination to revenge the death of their guilty comrades. They were, moreover, determined not to emigrate to Arkansas, and believed that, in the moment of panic and consternation produced by these hostilities, they could escape to Florida with the booty they could obtain from the murdered and fleeing inhabitants.

These, in my opinion, were some of the causes which produced the Creek war. Public opinion has, in some sections of the State, assigned as a principal cause of hostilities the frauds which are alleged to have been committed on the Creeks in the purchase of their lands. Of this I know nothing, and have no evidence on which to form an opinion. I cannot, therefore, either affirm or deny the truth of the report.

The predatory incursions of the Creeks into Georgia kept up a constant excitement in the counties on and near the Chattahoochee, which produced repeated calls on the executive of the State for protection. In the

month of January last, arms and ammunition were sent to the counties thus annoyed; and in each a corps of twenty men was formed and called into service, as spies to watch the movements of the Indians, and give notice of their conduct to the commanding officer of the county, or to chastise and drive them off, if their numbers were not too great.

These companies were kept in service until about the 10th of March, when they were superseded by a small battalion of mounted men, consisting of about two hundred, under the command of Major John H. Howard. This force was placed on the Chattahoochee, eighteen miles below Columbus, with instructions to patrol the country; and it had the effect to tranquilize the frontier, until early in the month of May, when the Creeks commenced open active hostilities, by murdering the white people, and burning their towns and property, and carrying away such booty as they could procure. The first notice I received of this state of things on the frontier was contained in a communication from the Hon. John Fontaine, mayor of Columbus, dated on the 9th day of May, and received at the executive office on the 11th. On the 12th I sent to Columbus one six-pound field-piece, and all the small arms remaining in the arsenal, and wrote to the Secretary of War, giving him information of the situation of the people in that quarter, and the general hostility of the Indians. On the 13th I issued an order, inviting volunteers to march to the scene of danger, and used all the exertions in my power to bring to the field a competent force, and furnish them with munitions of war.

The troops began to arrive on the frontier the last of May, and the first company was mustered into the service on the 2d or 3d of June, as well as I now recollect. Previous to this, however, the militia of the neighborhood had been called out for temporary protection, and until the army could be assembled. The troops, as fast as they arrived, and could be provided with arms, &c., were placed at different points on the river, below Columbus, to prevent the escape of the enemy to Florida. The number of Georgia troops that flocked to the standard was between four and five thousand, besides which there was a considerable number of regular troops; but most of the Georgians were without arms, and, consequently, were not in a condition to go in search of the hostile Indians until about the 18th or 20th of June, when the troops received arms, and took up the line of march under Generals Scott and Sandford.

I have the honor to be, very respectfully, your obedient servant.

WILLIAM SCHLEY.

MESSRS. ALFRED BALCH and

T. HARTLEY CRAWFORD,

Columbus, Georgia.

Z.

EXECUTIVE DEPARTMENT, ALABAMA,
Tuscaloosa, October 27, 1836.

GENTLEMEN: I have had the honor to receive yours of yesterday, in which you refer to the resolution of the House of Representatives of the United States, adopted at the late session of Congress, authorizing the President of the United States to "take such measures as in his judgment

might seem expedient, to inquire into certain frauds alleged to have been committed in the sale and purchase of reservations of land to the Creek Indians, and *into the causes of their late hostilities*," and to your appointment, by the President, for the purposes indicated by that resolution. Your inquiries are confined to the *causes* of the late hostilities of the Creek Indians, in relation to which you request my opinions.

I must say, in reply, *I have no personal knowledge of facts* on which to found an opinion on the subject to which you allude. I am not aware that I have had any communication, personally or by letter, with any individual who may have been implicated in the excitement of hostilities. So far as I am able to judge from the communications of individuals, or from indications of public sentiment, as expressed at public meetings, and otherwise, it seems to me the opinion prevails extensively, if not almost universally, that the frauds and forgeries practised upon the Indians, to deprive them of their lands, were amongst the principal causes which excited them to hostilities.

Some of those with whom I have conversed have ascribed the war to the combined influence of several causes: to the frauds and forgeries before mentioned; to the vice and intemperance introduced amongst them by a class of white men; and to the destitute and almost starving condition to which they were reduced, mainly by the operation of the two former. With the means of information in my power, I am inclined to believe the latter opinion most correct.

I beg leave to refer you to the copy of a letter from Major General Gilbert Shearer, commanding the sixth division of Alabama militia, bordering upon the Creek country, dated 2d May last, which has some reference to the subject of your communication; and, also, to the copy of one from Major General William Irwin, commanding the fifth division, bordering upon and including part of the territory which was occupied by the hostile Indians, dated 4th May last, with which you have already been furnished.

With the highest respect, I am, gentlemen, your most obedient servant,
C. C. CLAY.

To Messrs. CRAWFORD and BALCH,
Commissioners.

Report of T. Hartley Crawford on the causes of the late Creek Indian hostilities, &c., under a resolution of the House of Representatives of the United States, passed on the 1st July, 1836.

GREEN'S, NEAR TUSKEGEE, ALA.,
January 9, 1837.

SIR: The House of Representatives of the United States, on the 1st July, 1836, "*Resolved*, That the memorial of certain citizens of Alabama and Georgia, respecting alleged frauds in the purchase of the reservations of the Creek Indians, and the causes of their present hostilities, be referred to the President of the United States; and that he be requested to cause such measures to be taken for investigating these transactions, and for the prosecution of the persons engaged in them, who may have been guilty of any breaches of the laws, as may appear to be proper, and

within the power of the executive." Under this resolution the President appointed two commissioners, charging them with the inquiries therein suggested. I being one of those commissioners, report:

That the movements of a savage people, broken into different tribes, whose communications with each other are secret, made in a language known only to themselves, through private channels, and diffused by the chiefs over their respective towns in whispers or by signals, are exceedingly difficult to follow when they have developed themselves in hostile acts, and much more so to trace back to their sources, which are always hidden in the recesses of the forest. The facts must necessarily be few, and generally of impossible verification, resting chiefly in the bosoms of the actors, whose known duplicity may conceal in your visiter of to-day the individual who fired your dwelling, or perpetrated more horrid atrocities, in the past night.

The investigation confided to the commissioners has been conducted with assiduity; and, in the language of their instructions, they have "spared no pains to procure a full disclosure of every fact important to a fair understanding of this whole subject," and, "especially, to ascertain what steps have been taken by any white persons to excite the Indians to war." The obstacles that have been alluded to, and which must ever be placed in the way of inquiry as to the motives of this branch of the human family—wild, changeful, deceptive, and revengeful—great as they are, have been immeasurably increased, in the present instance, by the removal of nearly the whole nation, and all the Creek warriors, and the restoration to entire quietude and peace, in which I happily found this country on my arrival. The storm had passed; some were struck down, but the sun again shone upon the survivors; and the excitement which even the presence of the hostile Indians might have maintained, had subsided. The ordinary pursuits of life once more occupy the white inhabitants, who speak of the late robberies, conflagrations, and murders as matters of history, as things that have occurred; without stating, or appearing sometimes to know, why the war-whoop, the fire-brand, and rifle drove them from their dwellings; rejoiced, in many instances, that the destruction of their property afforded them an opportunity to escape the more favorite occupation of savage ferocity—the extinction of human life.

Distinct facts, susceptible of proof, it was impossible to obtain. Impressions, opinions, and belief were abundant; but rigid scrutiny has not been able to elicit any precise act which might serve as a specific reason for the wild outbreak that so lately overran this region. The instructions from your department authorized the widest range, and were framed with a view to the discovery of the secret springs of the atrocities, which rumor had assigned to causes more distressing, if possible, than themselves. The latitude given has been freely employed in every proper shape that promised usefulness; and the result is, a conviction that in this case we find another proof to be added to the many that have preceded it, that masses of men are rarely impelled by other than general causes, which alone are powerful enough to move them.

The savage, in his best condition, is generally unemployed and idle, restless, and passionately devoted to the chase and to arms. Fierce and vengeful, he knows no law but might; and, though usually brave, he is more profuse than generous; but just in his rare property transactions, and true to his word. Predisposed, by his very position and the circum-

stances that surround him, not less than by his nature and the laws of his people, to seek redress for supposed wrongs by violence, he is credulous of injury, and slow to believe in benefits. His warfare consists of treachery; and the blood of the woman and the child dies his fame of a rich hue in barbaric estimation. But proud, vindictive, ferocious, and cruel as he may be by nature and habit, his degradation is almost without limit when surrounded by white men. He is then infinitely debased below his untamed fellow of the forest; he loses the bold bearing of the freeman who associates with his equals, and whose acts are strongly marked by the independence that is almost his only individual possession. The cupidity of *our* species enters into every cabin, and preys upon the weakness of its occupant, whose small means may be said to be swallowed at a draught; and he sinks, the victim of the unprincipled, into the lowest depth to which humanity can fall. His indolence reduces his means of living; his vices waste them; his wants make him dishonest; his ignorance justifies his acts; and his sense of inferiority still further degrades him. In this deplorable situation the Creek Indians stood prior to the commencement of hostilities, prepared to yield to the impulses likely to arise in the bosoms of such men, so circumstanced, from the causes that will now be stated.

Many of the Indians, and particularly those distinguished by the appellation of the "Lower Creeks," were disinclined to emigrate to Arkansas. Although the treaty provided that they were to be transported only with their own consent, yet its whole scope contemplated their removal so soon as their lands were disposed of. They knew it, and acquiesced. The policy of the government for many years, in regard to these imbecile and dependent beings, has been dictated by a just regard to them, not less than by a proper consideration for the interests of our fellow-citizens who reside near them. It is a law of their condition, that they must recede before the white man: to remain, would be gradual but speedy extinction; to go, may only postpone their destiny; yet it is the course indicated by humanity and policy, and the only one that promises them any share of future prosperity—the Indian's best prospect, the philanthropist's last hope. The benevolent may regret that they should be carried from the woods through which they have roamed, and the huts they have tenanted; but the moral necessity for it that exists cannot be resisted; and those who have had a near view of these people, demoralized and profligate, as they are, cannot but think that the sympathy which gives the body of them credit for much pain at separating from their old hunting grounds is misapplied. It is no more than has befallen them in all parts of the United States, even those now covered with a busy population and commercial cities, where the pursuit of happiness, through all the channels opened by civilization and refinement, is substituted for the wastes of savageism; and it would seem to be in the order of Providence that fertile lands were not destined always to furnish, no more than the precarious supplies of the gun. Their aversion to removal may have arisen, in some degree, from attachment to this spot; but to a much greater extent from that indolence so natural to them, and which habit has made insuperable; from the apathy and indifference that make effort intolerable; and, in a good measure, perhaps, with many, from an indisposition to meet that portion of the Creeks who have heretofore emigrated to Arkansas. From whatever reason, however, though many of their chiefs expressed for them

their willingness to go, it is certain that, as the time of their departure approached, obstacles were interposed, and evasions resorted to. This discontent increased with each succeeding day; an irritable mood grew out of it, which, festering with every hour, was one of the prominent causes of their recourse to violence, that made what was theretofore matter of prudent forecast, an imperious duty, in respect to the hostiles; and the first law of nature demanded their removal, and that of the whole tribe, with whatever haste circumstances, and a due regard to their admitted rights, allowed.

Most of the Creeks had sold their lands—many of them years ago; and having in view the change of residence intended, had made no crops. Utterly reckless in their expenditures, and ignorant of the true value of money, it had been squandered as soon almost as it was received. The manner more than the fact of their improvidence, begot and strengthened that dissatisfied and moody state of mind so unfriendly to their own interests, and the peace and safety of the citizens of this section of Alabama. The means which the sales of their property furnished attracted to “the nation” white men, who brought to the doors of their wretched dwellings the intoxicating cup, upon which have been chiefly lavished the funds that might have contributed largely to their future subsistence—to the disgrace, the burning and lasting shame, of the tempters, and the deeper humiliation of their victims. The observations made here leave it very doubtful, as a practical question, whether it is important that the Indian should receive more or less money, unless it could be expended for him in the necessaries and comforts of life. Still, morality and integrity require that he should be compensated by an equivalent for whatever is his. The indulgence of their insatiable appetite for ardent spirits left them poor and enfeebled, discontented with themselves and others, in a starving* condition, and in that precise situation which frequently blows the civilized man from the anchorage ground of principle. The isolated Indians, untaught the ways of morality, unbound by the ties of social life, and not feeling or recognising ties of any kind, unless they yield personal gratification, endeavored to supply the wants their own vices had created, by depredation and theft. These inroads upon the rights of others were properly resisted, and sometimes punished. They banded together to effect their purpose, and were opposed by correspondent strength. The aggressions were repeated, and again met their deserved consequence. Deaths on either side occasionally occurred in the collisions that arose, and the leading trait of Indian character—revenge for the death of an associate—soon displayed itself in midnight burnings and cruel murders. Once commenced, they operated as signals for collecting those who had as yet stood aloof. The characteristic fondness of the Indian for predatory warfare seduced the unwary, and the spirit of companionship led others into the conflict, which, though short, could not be suppressed, except at the expense of much money; nor until considerable property, and, what was of infinitely more importance, many valuable lives were destroyed.

It is believed that the rising here may be in part attributed to the then, and unfortunately still, existing hostilities in Florida. Incited by the

* Not a doubt is entertained that many of the Indians now in Alabama would die for want of food, in the course of the winter, if the government supplies, issued by United States officers on stated days, did not sustain them.

causes before and hereafter mentioned, they were still further stimulated, heated, and inflamed, by the idea that, when beaten, (as they knew they must be,) they could plunder the deserted white settlements, and skulk, or fight their way if necessary, through to the Seminoles, combined with whom, they hoped, in their ignorance, to maintain their stand. From this union, they looked to results to which their untutored minds gave no particular form. They dreamed of undefined success in arms, that would gain for them extensive good. It is probable that this consideration operated with great force on the Creeks, and gave additional weight to the other motives by which they were actuated. They no doubt exaggerated the strength of the Seminoles; knew that the United States troops were engaged against them, and believed they could not soon be drawn to this quarter. So small a portion of the Creek nation as was embraced by the towns that took up arms, confined principally to the Lower Creeks, with a few scattered individuals who may have joined them from other towns, whose population was generally friendly, unable to muster more than a few hundred warriors, and never having their entire force actually embodied, (four-fifths of the whole tribe remaining at peace, according to my information,) would never have embarked in so desperate an undertaking as that upon which they entered last May, if they had not indulged the illusory hope that Florida was a fastness, to which they could retreat; and, in fact, some of them are there now, aiding their ferocious allies to resist the gallant troops contending, not so much with them as with the hammocks, and morasses, and diseases of the Territory. Seen through the mists by which their ignorance surrounded the operations in Florida, they assigned their protraction to Indian prowess, instead of the real difficulties that encompass our forces; which, if human effort can command success, it is thought will soon be overcome.

These views are abundantly supported by the communication of Governor Schley, of Georgia, of the 7th October last, to the commissioners, and herewith transmitted. The depredations upon property, prior to open hostility, had been chiefly inflicted upon Georgians; the attention of the governor had been early drawn to them, and his official functions exerted in the ablest manner to repress the incursions. It will be perceived, that with the best lights for judging, one of his leading objects was to prevent the junction of the hostile Creeks with the Florida Indians. He seems to have entertained no doubt that to effect it was their intention, and a careful consideration of the subject must, I think, establish the correctness of his conclusion.

It is thought quite likely, too, that, having ceded the sole remaining part of what tradition told all, and recollection many, were their once proud possessions, these unfortunate people could not look back without regret, nor forward without despair. They have not understanding to appreciate justly the beneficent designs of the government for them, nor to know the value of that philanthropic policy which obtains their almost reluctant consent to measures that are intended exclusively for their benefit. They look over the wide domain, which once owned them for masters, with sorrow that it is gone, as the spendthrift who has squandered his estate in vice, with blasted reputation and decayed constitution, regrets his poverty, when, with his habits and standing, his estate would be valueless if he had it. Crude ideas of this description, unshapen by any just conception of their own rights or those of others, would exercise an unfavorable

influence upon minds acted on by so many and more immediate considerations. These children of impulse do not stop to inquire into the justice of their cause, the ground of offence, or the probable issue of the contest; nor would they be capable of it if they did. Their movements, whether of peace or of war, are as fitful as the storm, and for a season as little subject to control—as often undertaken without as with good reason; and the fact that they had no longer a foothold in the country, is believed to have been one of the causes by which they were induced to strike for maintaining by force what they had parted with by contract.

Public opinion, in this lately harassed district, imputes to frauds committed upon the Indians in the transfer of their reservations a large influence in exciting them to hostilities; and this impression is, obviously, well founded. These frauds have been of the most flagrant character; disgraceful in the highest degree to those who perpetrated them, and unjust in a ruinous extent to those upon whom they were practised. It is difficult to imagine a state of things more discreditable than that which existed in the Creek country, for a short time, in respect of the sale of Indian locations. The thirst for gain appears to have impelled men to the cool and deliberate conception of schemes for plundering the improvident and ignorant savage of his property. The simplicity and credulity of the real holders now served the purpose of the designing; and again, and more frequently, Indian villany, trained for the occasion, was the instrument used. In the former cases, the consideration money was paid in the presence of the agent, and obtained afterwards, on some pretence, from the Creek who had signed a contract for his land; in the latter, one Indian was made to assume the name and character of another, the real owner of the reservation, and to pass through the necessary forms of its conveyance, for hire—being paid five or ten dollars for his services in this iniquitous business; while the true reservee was miles distant, unsuspecting of the toil that was gathering around him. The knowledge of these transactions was not confined to the white residents, as the correspondence of Creek chiefs with your department, in 1835, fully shows. Many, or a few such instances, would lead to the conviction in savage minds that all had been despoiled, even where an adequate consideration had been paid and received; and all the feelings necessary to the sad transactions of the past spring and summer would be aggravated by the reflections consequent upon this belief. This influence was unquestionably potent. It was natural it should be so. Unable to comprehend their rights, and too willing to part with them for a disproportionate consideration, the Indians are still, without properly appreciating, tenacious of their landed interests. Though generally silent, they were not unexcited spectators and auditors of what was passing. They stood upon their own land, while the currents and eddies of fraud were flowing and whirling around them with such rapidity and force as to threaten the undermining of the ground below their feet. Is it wonderful that in their cabins it should be the subject of conversation; in their social meetings, of spirited remark; at their dances and ball-plays, of impatient and exciting complaint; and in their councils, of inflammatory and fiery debate? Among civilized men it is difficult to impose restraint upon a sense of wrong; with the savage, impossible. I have no reason for asserting that those engaged in any way in the purchase of reservations took an active personal part in blowing the flame about to burst forth. So grave a charge

I should deem myself unjustifiable in making against any man, unless upon the most clear and cogent proofs.

It may be remarked, in addition, that many of the Lower Creeks, among whom the great body of the hostile Indians resided, without one bond to bind them to truth or principle, and who had squandered the full prices paid for their lands, imagine that all contracts would be overturned, and that they should again receive funds to expend upon the same course of debauchery and profligacy that had exhausted their empty purses.* It is a remarkable fact, that, in many of those towns upon which the most numerous and glaring frauds are said to have been perpetrated, the Indian disposition was most peaceful. In some of them, not an arm was raised or a blow struck; property remained untouched, and the inhabitants unharmed, who, though surrounded by a force many times larger than they could rally, pursued in dread, certainly for a season, but without molestation, their ordinary avocations. This branch of the inquiry has been prosecuted with the greater anxiety, because the memorial upon which the resolution of the House of Representatives of the 1st July, committing this matter to the President, was founded, distinctly sets forth the belief that fraudulent speculators in Indian lands had stirred up the late war. It was due to the convictions of the memorialists; to the representations they had made to the legislature of our country; to the government, and the confidence it had reposed in the commissioners, that no exertion on their part should be wanting to arrive at truth in this serious matter. I have devoted to it my best efforts, and the result has been stated.

Several of the foregoing positions are sustained by the communication made to the commissioners by Governor Clay, of Alabama, on the 27th October last, which accompanies this report. As the chief magistrate of the State, within whose limits the Creek Indians lived, his most vigilant attention was directed to their movements. He had the fullest means of information, and the best opportunity for determining correctly upon the causes of the danger that impended over his fellow citizens. With what zeal, ardor, and ability he performed his public duty, in the exigency that arose, is well known. They were such as to insure to him the respect, approbation, and gratitude of his constituents, and would have commanded precise knowledge on the subject of this report, if accessible.

On or about the 1st day of June last, a man named — Earle was committed to the prison of Montgomery county, in this state, on a charge of exciting the Indians to war. He died in jail before his trial, and but little is known of his movements. It appears, however, that about the time, or shortly before the hostilities commenced, he was among the Creeks, and read and explained to them an inflammatory proclamation issued by Sir George Cockburn, when commanding a British fleet off our coast during the war of 1812, and circulated among the Indians, at that time, with the view of inducing them to rise. How, or where, these papers were husbanded and concealed during so long a time, is unknown. Whether Earle had them in his own possession, and circulated them among the savages, or found them in their cabins, and thence distributed them, does not clearly appear; but Opothleyoholo, in a talk which he held with the Governor of Alabama on the 30th of May last, stated that "he had receiv-

*See Captain Page's letter of 9th May, 1836, Doc. H. R. 276, p. 386. Letter of Opothleyoholo and other chiefs, dated 16th March, 1835, same doc., p. 129.

ed information of a matter he had been unable properly to comprehend—it was concerning a paper or letter said or pretended to have been sent from people beyond the seas—this, it was said, had been circulated in some of the Indian towns.” Colonel Hogan called on Earle in prison, to whom he admitted he had read the proclamation to the Indians, and explained it, so far as his knowledge of the Creek language enabled him to perform that office; and, upon being asked “how many of these papers were issued among the Indians?” he replied “he had seen several.”* This man represented himself to be a son of the prophet Francis, on the information, as he said, of his mother; and he had an Indian wife. The transaction is mysterious, and made more so by his death, which has thrown over it a cover that cannot be removed by any known means. What motive could have prompted him to such a step? If fully explained, as his communication to Colonel Hogan would seem to import, and Opothleyoholo’s talk to countenance, the proclamation itself could not have produced the war; and, besides, hostile dispositions had evinced themselves long before his appearance in “the nation.” But the coincidence of such acts with the existing condition of Creek relations, stamps his conduct with a complexion from which there is no escape. Good could not come of it, under any circumstances; harm, grievous evil, might follow as things were. Part of the Creek nation was a magazine; a spark only was necessary to an explosion, and that spark Earle may have supplied. The heat and anger which prevailed among the hostiles, their ignorance and consequent liability to misapprehension, may have given to this paper, in combination with other stimulants, a most malign influence. How far, or to what extent, it operated, cannot now be ascertained; but that it may have furnished an additional impulse to the warlike dispositions, and perhaps, at that time, the hostile determination of the Indians, cannot, I think, be well doubted.

Among the early acts of Indian hostility, the mail stage was, on the 16th May last, fired upon, life taken, and the mail rifled of its contents. Philander R. Broad, a white man, was soon after arrested on the charge of having participated as a principal in the commission of this crime. He was tried at the late December term of the district court of South Alabama and convicted. What steps he may have taken to seduce the savages to this act, or what other part he may have had in fomenting their ill feeling towards the white inhabitants, I am not informed. He was once a man of some respectability, but fell away into evil courses, and betook himself to Indian association. The robbery of the mail could scarcely have been a Creek project, though the murder of those in the stage might have been. The man who had control over the Indians, and could apply it to one bad purpose, would be likely to use it for another: and Broad’s agency may have had more effect in producing the late hostilities than can ever be reached. His thirst for money was the probable inducement to the crime mentioned, but his conduct renders him obnoxious to the imputation that his counsel was among the influences that arrayed his wild associates in arms against the government.

The foregoing, operating upon the remnant of a once rich, powerful, proud and haughty, but now broken, dissolute, scattered, and depraved nation, were among the chief causes of the recent hostilities, made more active, doubtless, by individual grievances, real or supposed. In a savage

* Extract of Colonel Hogan’s letter of 28th December, 1836, herewith sent.—Vide p. 17.

community, having daily intercourse with the whites, among whom some will always be found whose desire of pecuniary gain will be too strong for the control of principle and conscience, heart-burnings must spring up from the overreachings and frauds that are daily practised on the weaker party, which are sometimes so flagrant as not to escape the notice of even the wild men upon whom they are put; though, without question, the impositions are numberless which the possession of some showy, but useless, and more frequently destroying article, glosses over with apparent fairness. So it always has been, and ever will be. In the Creek country, however, these evils have reached their greatest height, from the fact that the Indians have been receiving, and were known by everybody to have, large sums of money. That which is universally sought as a positive good, and might have been to them a blessing, has been generally converted into a curse. A visit to "the nation" made four months ago, or even now, would convince the most sceptical of the propriety, in every aspect, of the removal of these unfortunate beings to a country exclusively their own.

The treaty of 1832 was conceived and made in a spirit of great liberality by the United States. The money arrangements, so far as the time for their performance has arrived, have been promptly and faithfully executed on our part. The government gave a most reluctant assent to the principle of reservation, which has been the prolific parent of most of the misfortunes of the misguided Indians. The President, well acquainted with the weakness that characterizes them, and the boundless cupidity of many who rest their hopes of amassing fortunes upon that imbecility, objected to this provision; remonstrated and reasoned, as far as it was practicable, with the other contracting party, against a stipulation that must work injuriously, but in vain. The Creek chiefs were prepared to resist, and did oppose, the receipt of so much of the consideration in any other form, insisting that upon no other principle would they treat. Acquiescence became indispensable, and the result shows the wisdom of the suggestions made by the Chief Magistrate. The contract of necessity assuming its present shape, every prudential proviso was inserted that the guardian position of the one party required in favor of the other. No guard that could be thrown around Indian rights was omitted, and every shield that seemed capable of warding off assaults upon their interests was upheld. The parental duty of protecting these wards of the United States from harm was sedulously performed by the details of the treaty. The lands reserved to the chiefs and heads of families they could dispose of only with the approbation of the Executive, under whose direction and superintendence the twenty sections provided for "the orphan children of the Creeks" were to be disposed of for the benefit of those interested. To leave to them the power of disposition, would be to give to the breeze the property they so pertinaciously adhered to in the negotiation, and every consideration of humanity and justice called upon the United States to provide for the security of those who had no care for themselves. The earliest and most vigorous measures were adopted for executing in its true spirit, and with the utmost fidelity, the engagements of the government. The survey of the tract of country ceded (amounting to 5,200,000 acres) commenced under orders issued within one month of the ratification of the treaty, and was prosecuted with the greatest diligence until finished, in December, 1833, so far as to enable the War Department to locate the Indians upon their different reserva-

tions, amounting, besides the orphan land, to 6,676,* and covering 2,174,400 acres. To this end a census of the Creek nation was ordered on the 14th May, 1832; exhibiting, on its return in May, 1833, an entire population of 23,566 souls. The preparations for assigning his land to each reservee, under the treaty, were most laborious, and necessarily, with all the devotion that could be bestowed, occupied the time mentioned; and the marvel is, that so much was accomplished. In making the allotments, the improvements of the Indians were a leading object of attention by the compact; and to ascertain to whom they belonged, required vigilance, labor, and patience. The work of location was completed in January, 1834. These steps preceded, as they must, all sales of reservations; but proper officers were appointed to superintend them, and commenced operations early in 1834, which have since been prosecuted vigorously, except for a short time in 1835, when they were suspended on the allegation, sustained by public opinion, and the strongest representations to the government, of frauds having been practised on the simple minded Indians, and when the late hostilities made progress in the business impossible. That these sales should not have been heretofore closed is certainly not surprising, when it is recollected that they were made at the option of the Indian, the time entirely at his own disposal, and subject only to such supervision of the President as would protect him from imposition. He is tardy in his movements, and the public agents were obliged to wait his pleasure, for the choice of selling or retaining was secured to him. That frauds should have been committed can excite no astonishment, and, in fact, was greatly apprehended. The ignorance of the Creek—his depravation—the want of acquaintance with his person, his features, residence, name, and character—and the overweening avarice of some men, prompted the unprincipled to his circumvention. Every effort was made, as the instructions to public agents sent hither will prove, to save them from injustice; ingenuity was taxed, and the aid of every physical, moral, and religious restraint invoked to shield the weak and simple from the wiles and cunning of the artful. Every exertion has been made to correct the wrongs it was impossible to prevent, and these efforts have been renewed, and are again put forth, for whatever protection it is necessary or found practicable to afford. It is, however, matter of gratulation that much has been done for these helpless children of nature—much more than even the well informed are, perhaps, generally aware of; and the heart of the philanthropist may rejoice to learn that \$890,400 have been received by the Indians on approved contracts, and that, if the remaining locations shall yield at the same rate, the further sum of \$1,566,812 80,† independent of the twenty sections reserved for the orphan children of the Creeks, or with them \$1,581,276 80, will be realized for them under the treaty. That the most advantage should not be made by these recipients of the parental care of the government, and that the large sums paid them should have been to a great extent thrown away, is matter of deep regret to all, who have hearts to feel for this benighted race; but they alone could possess and control the use of their own funds. Their im-

* This number includes the 29 sections provided for in the 6th article of the treaty.

† Of this sum a considerable part has been already received, but how much cannot be ascertained until the contested contracts are passed upon, and all those lately certified are reported.

providence and waste is inseparable from their condition, and so long as they remain a barbarous people, they must be thoughtless, selfish, and sensual. All that the beneficence of the government could do, has been attempted in the only modes justified by law, and it has accomplished all that could reasonably have been anticipated under the circumstances. In whatever it has failed, the censure is imputable to those of our own color, to whom the wrong and shame belong of entrapping the silly and infatuated Indian to gratify the most base and sordid passion. Let the persons inclined to complain vent their reproaches upon the heads of those who were willing to receive the property of the deluded and deceived Creek without any consideration; whose machinations induced him to falsify, and represent himself to be the owner of land that was not his, and for a paltry sum to convey what belonged to another by assuming his name; who imposed on the government agents, by paying the purchase money in their presence, and receiving it again from their victims. Let the querulous visit Alabama, and they will find that but one sentiment prevails in "the nation;" that public meetings reiterate the opinions and convictions conveyed to Congress in memorials; that the citizens, individually and collectively, speak with one voice, and that so loud as to penetrate the remotest corners of this quarter of the country, and reach beyond them. The field of speculation that was opened was wide; many entered it, and some reaped with what dexterity they could, endeavoring to acquire estates, which must always be too dearly bought when the price is reputation.

The remaining duty of the commissioners (an investigation into the "alleged frauds in the purchase of the reservations of the Creek Indians," with a view to the confirmation or rejection of the contracts by the President) is in a course of performance. The result of their labors in this particular will be reported in detail as soon as practicable. Until that report is made, I forbear any remarks upon the subjects to which it will relate, other than those which occur as necessary to the elucidation of the principal topic of this communication. In the mean time, it may be observed, that there are several hundred locations yet open, which have never been sold, or certified to the President—including a large number of cases where death has intervened, and descent been cast according to the laws of Alabama. The commissioners, in the discharge of their duty, will probably be constrained to recommend the reversal of many contracts, which, with those unsold, will make a large Creek interest in this country. The period during which the right of the Indian to sell was reserved to him by the treaty, approaches its termination. The 24th March, or 4th April next, (the latter, it is conceived, as the signing of the treaty, or its ratification, may be taken for the commencement of its operation,) will put an end to the locatee's right of sale. The emigration to Arkansas, and the legal inability of minor heirs, bar any sales at present by these classes of holders of land; while the Creek service in Florida renders it highly improbable that those engaged in it will have an opportunity to convey within the prescribed time. It is thought no regret should be occasioned by these circumstances, if, in the judgment of Congress, legislative provision can be interposed to save the Indian from himself. New relations between him and the United States are about to exist. When the five years shall have elapsed, all power of the Creek over the sale of his reservation will cease, and the authority of the government to dispose of

it, irrespective of Indian agency, will be full and complete. Still, the right of the reservee to the proceeds of the sale will be as strong and perfect as it ever was, and the character of trustees belongs to the United States as much and as clearly as heretofore. If the avails are paid directly to the Creek, they will be lost and wasted as they have been, and might as well, so far as he is concerned, be flung into the ocean. It is suggested, that authority may be conferred by law to have the reservations unsold, and which will remain to the Indians by the overturning of pretended contracts, valued by competent persons appointed for the purpose, and sold at public auction, or otherwise, as shall be considered most judicious; that the money raised by such sales might be funded for the benefit of the Indians, according to the sums at which their reservations respectively sold, and the dividends on it applied, under the direction of an agent, exclusively to the purchase of the necessities and comforts of life. If it should happen, in a few special cases, that the interest of the fund would amount to more than the wants of the individual required, the excess might be added to the principal sum, and in increase of the capital stock. The authority (of course to be prospective, and the law to become operative at the end of the five years) could not embrace such as chose to avail themselves of the fourth article of the treaty. It may be conceived that this instrument stands in the way of such legislation: perhaps it does; but it strikes me that the whole ground is open as to those who have removed, or may remove, and who shall not have effected sales within the specified time. The treaty evidently looked to dispositions within five years, and it seems to have been expected that no selection would remain unsold on the 4th April, 1837, unless it belonged to one who chose to remain; for, with the exception of persons who had so determined, there is no provision for ulterior measures. In many instances where Indians have died, leaving reservations, administration has been taken out of their estates, and orders of court, for the sale of their lands, procured under a law of the State, by virtue of which sales have been made by the administrators. How far these sales are valid, is not ascertained; but memorials have been filed asking the commissioners to take such steps as shall enable the purchasers to obtain patents from the government. Considerable sums of money, raised in this way, are represented to be in the hands of administrators. It becomes a question, what legal provision should be made for the receipt of this money from the persons who hold it, and how it should be disposed of, for the use of those entitled to it? If the sales are good, and take away the land, undoubtedly the legal representatives of the Indian should receive whatever balance may remain, on settlement of his account, in the possession of the administrator; but the absence of some, and total incapacity for business of all, preclude the possibility of a proper adjustment, and the probability of any adjustment whatever of their interests by themselves. It is not perceived that authority exists elsewhere for receiving the money, or making such an acquittance as would protect the administrator. If provision were made for this class of cases, and the intimations before given approved, the same agent might perform the entire duty, and give all the funds he should receive one direction.

It is, however, for the wisdom of Congress to determine what, if anything, ought to be done in the premises. These suggestions are submitted for what they are worth, and thrown out in the hope of attracting atten-

tion to the subject. Some of them have been made in communications heretofore transmitted to your department; but it was deemed not inopportune to introduce them here.

Soon will the last of the Creeks be beyond the Mississippi. When the United States shall have conferred upon them every benefit they are capable of improving, much will still be due to them. We cannot forget that what is now ours, was once theirs. The philosopher may muse with advantage on their fate, and trace in it the workings of humanity, through all their relations to us. The beginning, the advance, and decline of the various systems, in all their extent, that have been devised in savage or civilized life to punish crimes, reward virtue, and promote happiness, make up the history of our kind; yet different fortunes await the white man and the aboriginal. Of the former, nations may encroach on each other, or wars terminate in conquest; still the people remain, with all their peculiarities of manners, customs, and habits, to breathe the same air and look upon the same sky, perhaps to revolutionize their country, and, in turn, to conquer; but the son of the woods retires as we advance, is corrupted by the arts and lures of civilization, and a nation of warriors shrinks into a mean and spiritless few, without aim, and incapable of effort. It is late in the Indian's day, and his sun, it is to be feared, will soon set. The only atmosphere through which it can much longer light his way, is west of the great river.

The government contemplate a system of rule for those so well entitled to protection, which, while it shall comprise all the firmness and power so indispensable to their proper control, and the exclusion of all white admixture from their association, will, it is hoped, partake largely of the parental character. There can be no more noble work than the employment of a portion of our public funds in qualifying the future Indian for a change of life. For the adult, much cannot probably be done; for the minor and his posterity, everything. The establishment of schools that will furnish a plain education to every Indian child in existence, and that shall open their doors to all the afterborn, would, within two or three generations, reclaim whole nations of men from wild pursuits and wilder tempers, and win them to the cultivation of the soil, to social and moral habits; to the practice of virtue, and the following of the true God.

I have the honor to be, very respectfully, your obedient servant,

T. HARTLEY CRAWFORD,

Commissioner, &c.

Hon. B. F. BUTLER,
Secretary of War.